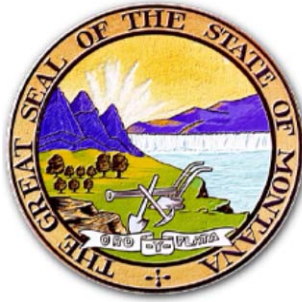


Report to:

Montana Department of Public Health and Human Services



Lien and Estate Recovery Business Process Redesign

January 30, 2009

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SECTION 1. Executive Summary

1.1. Introduction

Medicaid pays for almost half of the nation's long term care costs. Due to escalating enrollment and associated costs, federal and state governments have increased pressure to control Medicaid spending. Estate recovery is one method for recouping Medicaid spending on long term care. Estate recovery became a federal mandate in 1993, and is now implemented in 50 states. Estate recovery recoups funds from the estates of Medicaid recipients who were institutionalized and/or over age 55 when they received Medicaid. For recipients that fall into this category, estate recovery makes Medicaid different from other public benefit programs, because it is not an entitlement program.

Although estate recovery has been required of states since 1993, recovery amounts remain low. As of 2007, only six states reported recovery amounts over one percent of total state long term care expenditures. In 2005, states recovered 0.61 percent of their long term care Medicaid expenditures on average.¹ Recovery from probate only is even less.²

The Deficit Reduction Act of 2005 established a grant program to help states identify and adopt “innovative methods for improving the effectiveness and efficiency” of their Medicaid programs. One area eligible for funding under these Transformation Grants includes “methods for improving the rates of collection from estates of amounts owed under Medicaid,”³ or estate recovery.

In 2007 Montana's Department of Public Health and Human Services (DPHHS) applied for and received a CMS Transformation Grant. The purpose of the grant was to improve the effectiveness and efficiency of lien and estate recoveries by automating time-consuming manual processes and developing or improving systems that will ultimately greatly increase recoveries. DPHHS envisioned accomplishing this goal through assessing the effectiveness of the current processes, automating the processes that can be automated, and creating a systematic way to capture data to enhance lien and estate recoveries – with the goal of increasing the amount of collections on lien and estates to return to the Medicaid program. Montana hopes to increase collections by 50 percent, or \$750,000 per year.

Montana's transformation grant outlined four areas of work:

1. Coordinate with Montana Court Administration in their efforts to implement an integrated justice system enabling automated information sharing for probate (FullCourt).

¹ Erica F. Wood et al. “Protections in Medicaid Estate Recovery: Findings, Promising Practices and Model Notices.” AARP Public Policy Institute. Washington DC, 2007.

² 2004 TPL Collections. Excel Spreadsheet provided by Ben Chatman, HMS.

³ Center for Medicare and Medicaid Services. Fact Sheet on the Medicaid Transformation Grants. URL: http://www.cms.hhs.gov/MedicaidTransGrants/Downloads/Medicaid_Transformation_Grants_FactSheet.pdf.

2. Develop a coordinated, comprehensive approach to gathering the date of death and automating the inclusion of date of death into Montana's eligibility systems.
3. Develop an automated process for tracking recipients' real property and a statewide database for property search.
4. Conduct a business process review of lien and estate recovery processes.

Montana DPHHS contracted with Public Knowledge for the fourth area of work – reviewing the business processes for lien and estate recovery activities. This report contains comprehensive and detailed information on Montana's current business processes (as-is), best practices from other states and available literature on estate recovery, an analysis of the gap between the way Montana does things now and the best practice in that area, and recommendations for improvements (to-be).

1.2. Project Methodology

The project was structured in four phases: as-is, best practices, gap analysis and to-be. The following subsections outline the approach to each phase.

1.2.1.1. As-Is Phase: Understanding Current Processes

During the as-is phase, Public Knowledge (PK) consultants conducted activities aimed at learning how DPHHS does things now. We needed to understand how the lien and estate recovery staff conduct their business today in order to identify potential improvements for the future. To this end, PK consultants completed the following activities:

- Compiled documentation and other information on lien and estate recovery practices.
- Interviewed lien and estate recovery subject matter experts and stakeholders. Nine interviews with 16 stakeholders were conducted.
- Developed and validated ten as-is process maps and associated metrics.

1.2.1.2. Best Practices Research

Throughout the as is and gap analysis phases, PK consultants also conducted research on best practices in lien and estate recovery, including:

- Interviewed estate recovery experts at CMS and HMS. We conducted one interview with estate recovery staff at CMS, and conducted a group interview of three estate recovery experts at HMS, a private company that conducts TPL work for states, including estate recovery for ten states.
- Conducted telephone interviews of estate recovery staff of nine states. Email was used for follow up questions.
- Collected and reviewed forms, handouts and other documentation from states.
- Conducted benchmarking research to place Montana's estate recovery program in context of other states.
- Reviewed available literature on national best practices in estate recovery.

1.2.1.3. Gap Analysis Phase

During the gap analysis phase, PK consultants, in collaboration with DPHHS staff, conducted activities aimed at finding areas for improvement, or gaps in current processes, including:

- Analyzed the as-is process maps to identify areas of inefficiency or duplication of effort.
- Identified areas of strength in Montana’s estate recovery program.
- Identified best practices that could positively impact Montana’s estate recovery practices.
- Compared as-is maps to identified best practices.

1.2.1.4. To-Be Phase: Developing Recommendations

During the to-be phase, PK consultants and DPHHS staff developed recommendations for to-be processes. This activity can be thought of as “filling the gaps” between the as-is processes and the identified best practices. A to-be process map was developed for each of the ten processes identified in the as-is phase. Following the development of the to-be process maps and recommendations, PK consultants developed a set of recommended performance measures to track the success of Montana’s estate recovery program.

All recommendations were developed collaboratively with Montana’s estate recovery staff, taking into account Montana’s current practical, legislative, and fiscal reality.

We rated discrete recommendations by assessing their relative benefit to Montana’s estate recovery program. (We use the word “discrete” here because many of the recommendations are duplicative across processes.) We used four criteria to determine the recommendations’ benefit to the program. These four criteria were identified collaboratively with DPHHS staff:

1. Minimize cost to DPHHS. Cost could be in terms of system upgrades or other resources.
2. Minimize the impact on staff time. Staff are already stretched, and no additional FTEs are possible for the program at this time.
3. Minimize the negative impact on Medicaid recipients. This includes total number impacted, the size of the impact, or both. This criterion can also be read in terms of maximizing the positive impact on Medicaid recipients.
4. Maximize the amount of revenue collected through estate recovery.

In rating each recommendation, we considered the applicable criteria and weighed the importance of each criterion for the recommendation. The importance of each criterion varied according to the recommendation. For example, in some cases the cost criterion was the most important issue. In other cases, such as the recommendation around a case management system, the importance of cost was outweighed by the other criteria.

Using this method we categorized each recommendation with a high, medium or low benefit to the program. This method required a degree of subjectivity, however we attempted to weight each criterion as objectively as possible.

In addition to assessing the impact of each recommendation on the program, we ordered the recommendations chronologically in three categories: quick wins (things that can be done within the first 90 days and do not require additional resources or new legislation), medium term (things that can be done within the first year), and long term (things that can be accomplished from one to five years in the future, such as new legislation and changes related to the new MMIS).

1.3. Summary of Recommendations

The following tables include a summary of all the to-be recommendations from section 5 of this report. Recommendations are grouped in chronological order, starting with quick wins and finishing with long term recommendations. Each time grouping has its own table. Within every timeframe, each recommendation is unique. The to-be process column lists all of the processes impacted by this recommendation in that timeframe. Recommendations may be repeated between tables if they occur in more than one timeframe. Each recommendation has a subjective assessment of program benefit, based on the criteria spelled out in the previous section (1.2). We listed the recommendations in priority order, taking into account program benefit and dependencies.

Quick Win Recommendations

#	Recommendation	Program Benefit	To-Be Processes	Notes
Q-1	Track questionnaires and follow up on unreturned questionnaires	High	Estate Research	
Q-2	Verify questionnaire information with TEAMS and DIFSLA	High	Estate Research Non-Probate	
Q-3	Query the MMIS for lien and estate recovery information	High	Lien Research Estate Research Non-Probate	
Q-4	Use TortTracker for community spouse, exempt child, and exempt sibling information	High	Lien Research Estate Research Probate	
Q-5	Actively pursue unpaid claims	Medium	Probate	The new case management system will be in place before changes to TortTracker will have a large impact.
Q-6	Streamline property research with statewide Cadastral system	High	Lien Research Estate Research Probate	
Q-7	Create accounts for clerk and recorder payments	Medium	Lien Filing	

#	Recommendation	Program Benefit	To-Be Processes	Notes
Q-8	Train OPA offices to record complete and accurate estate recovery information	High	Supporting Processes	The TPL Unit will be very dependent on OPA staff procedures until CHIMES-Medicaid is implemented. This training will reinforce CHIMES-Medicaid BPR training in the medium term.
Q-9	Obtain heir information from nursing facilities	Low	Estate Research	
Q-10	Expand the questionnaire	Medium	Estate Research	Tracking questionnaire responses and verifying information in TEAMS are more important than expanding the questionnaire, although this will help identify additional assets until CHIMES-Medicaid is implemented.
Q-11	Implement attorney status reporting	Medium	Probate Attorney Internal Legal	
Q-12	Improve communication with probate courts	Medium	Probate Attorney Internal Legal Probate Supporting Processes	
Q-13	Request updated self-sufficiency trust information from PLUK	Low	Non-Probate	This recommendation only impacts one asset type, and so receives a lower program benefit rating. CHIMES-Medicaid will contain self-sufficiency trust information in the medium term, but the TPL Unit will need to ensure the information is up-to-date.
Q-14	Send hardship waiver information	Low	Lien Research Estate Research	This is an important step to protect recipient and heir rights, but will not have a large impact on the TPL Unit operations or recoveries.
Q-15	Provide feedback to OPA offices	Low	Lien Research Estate Research Non-Probate Supporting Processes	The TPL Unit already gives the OPA offices feedback on property. The TPL Unit will not have additional means to identify assets until the medium term.

Medium Term Recommendations

#	Recommendation	Program Benefit	To-Be Processes	Notes
M-1	Implement a case management system	High	Lien Research Lien Filing Fair Hearing Probate Attorney Internal Legal Lien Release Receipt Estate Research Probate Non-Probate	
M-2	Receive additional information from CHIMES-Medicaid	High	Lien Research Non-Probate	CHIMES-Medicaid will have to be enhanced to capture, maintain, and share all necessary lien and estate recovery information.
M-3	Pass legislation allowing Medicaid to collect from financial institutions.	High	Non-Probate	
M-4	Implement field training for eligibility workers	High	Supporting Processes	Leverage CHIMES-Medicaid BPR work
M-5	Provide feedback to OPA offices	High	Lien Research Estate Research Non-Probate Supporting Processes	Feedback will be more important in the medium term because it will reinforce CHIMES-Medicaid training.
M-6	Use ARMS for receipt processing	Medium	Receipt	
M-7	Eliminate ACS' role in receipt processing	Low	Receipt	Recommendation is dependent on using ARMS for receipt processing.
M-8	Define performance measures	High	Supporting Processes	
M-9	Conduct workload analysis	Medium	Supporting Processes	Focus of workload analysis will be defined by selected performance metrics.
M-10	Develop and implement consistent policy on interest for overdue claims	Medium	Probate Non-Probate	

#	Recommendation	Program Benefit	To-Be Processes	Notes
M-11	Improve communication with probate courts	Medium	Probate Attorney Internal Legal Probate	
M-12	Update brochure and web site	Medium	Supporting Processes	
M-13	Invest in TPL Unit training	Medium	Supporting Processes	
M-14	Consider reorganizing TPL workload division	Medium	Supporting Processes	
M-15	Improve communication with nursing facilities, funeral homes, and banks	Medium	Supporting Processes	
M-16	Discontinue use of obituary clipping services	Medium	Estate Research	

Long Term Recommendations

#	Recommendation	Program Benefit	To-Be Processes	Notes
L-1	Pass legislation giving Medicaid priority creditor status	High	Estate Research Probate Non-Probate	
L-2	MMIS automatically sends lien and estate recovery claim information	High	Lien Research Lien Release Estate Research Probate	
L-3	Pass Legislation requiring notice to creditor or small estate affidavit	High	Estate Research	
L-4	Receive probate information from FullCourt system	High	Probate Attorney Internal Legal Estate Research Probate	
L-5	Pass legislation allowing requests for notice or affidavits of fact relating to title	High	Lien Research	
L-6	Pass legislation allowing post-death liens	High	Lien Filing	
L-7	Utilize contingent claims	High	Estate Research Probate	
L-8	Flag recipients identified for lien and estate recovery within the MMIS	High	Lien Research Estate Research	
L-9	Mark recovered claims in the MMIS	Medium	Receipt	
L-10	Pass legislation making the state the first remainder/beneficiary on life insurance	Medium	Non-Probate	
L-11	Pass legislation making Medicaid successor on estates	Medium	Non-Probate	Need to determine which assets to target. Already targeting PNAs, burial funds, and bank accounts.
L-12	Create family-focused outreach materials	Medium	Supporting Processes	

#	Recommendation	Program Benefit	To-Be Processes	Notes
L-13	Provide feedback to OPA offices	Medium	Lien Research Estate Research Non-Probate Supporting Processes	
L-14	Utilize the shared fiscal services layer	Medium	Lien Filing Receipt	Lien and estate recovery will gain the most benefit from using ARMS. This recommendation will naturally occur once ARMS communicates through the new enterprise architecture.
L-15	Explore alternatives to track community spouses, exempt children, and exempt siblings	Low	Estate Research	These options are more long term and uncertain, so they are lower priority.
L-16	Discontinue use of probate clipping service	Low	Estate Research	

1.4. Report Organization

This report is organized into five sections. Each section reflects a major project phase or activity.

Section 1 – Introduction. Provides background on estate recovery on a national level and Montana’s business process redesign project in particular. Offers an overview of the project methodology, and provides a summary of discrete recommendations.

Section 2 – As-Is. Provides a snapshot of how DPHHS currently conducts business in the area of liens and estate recovery. Ten maps graphically depict the program’s major processes and accompanying narrative describes details of each process.

Section 3 – Best Practices. Provides information on best practices in estate recovery. Summarizes research findings from a literature review and telephone interviews with national estate recovery experts and estate recovery staff of nine states. Provides benchmarking information in a table format to contextualize Montana among a sample of other states.

Section 4 – Gap Analysis. Identifies the gaps in Montana’s current lien and estate recovery processes. The identified gaps will pave the way between the as-is and the to-be processes.

Section 5 – To-Be. Provides recommendations for improvements to Montana’s current lien and estate recovery processes. Recommendations are ordered in three phases – quick wins (within next 90 days), medium term (within one year) and long term (within five years). To-Be process maps are included in this section for each of the ten processes mapped in section 2.

Appendix. Provides additional supporting information. Appendices include:

- Glossary of terms used in the report.
- List of individuals interviewed during the development of the as-is process maps.
- List of individuals interviewed for best practices research.
- Interview write ups from other state interviews.
- A table of documentation currently used in Montana.
- Recommended performance measures.
- Reference list of all best practices literature reviewed.
- Example questionnaire from Washington.

SECTION 2. As-Is Processes

2.1. Introduction

This section contains an objective description of the current lien and estate recovery processes used by DPHHS' TPL Unit. *Current* is defined as December 2008, which is the month the BPR project commenced. As of December 2008, TEAMS is the Medicaid eligibility system. CHIMES-Medicaid will be implemented in July 2009.

We present lien-related processes before estate recovery-related processes because liens chronologically occur before estate recovery. In Montana, liens occur only when Medicaid recipients are alive. Estate recovery commences once recipients die. There are ten distinct component processes. A number of the processes occur within both lien and estate recovery. The process write-ups will not be duplicated in this document. Instead, we will refer by section number to processes occurring within estate recovery that are already described within the lien subsection.

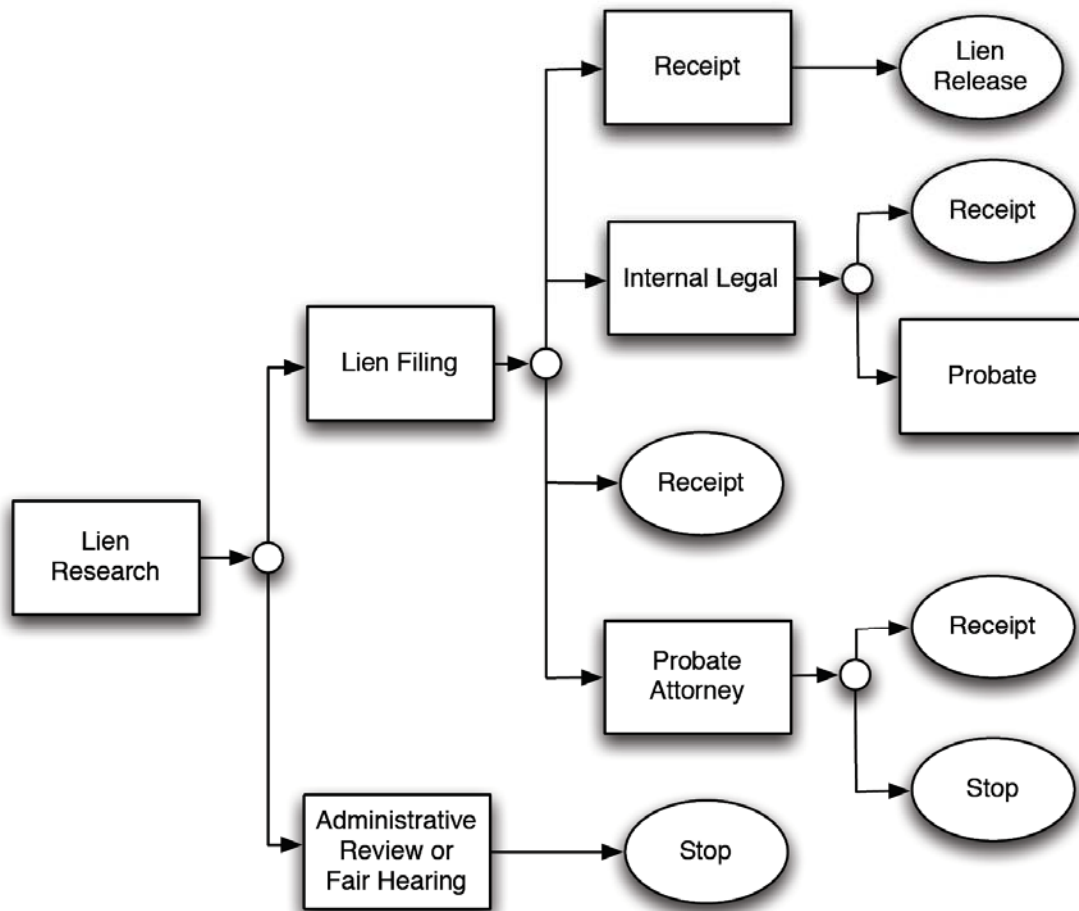
Each process contains an overview, process map, step-by-step narrative, and current metrics. The process map is a visual depiction of the process. Rectangles represent processes, diamonds represent decision points, and ovals are termination points. The step-by-step narrative describes the map in more detail. The numbers in the narrative match the numbers in the maps. The metrics are a list of the metrics currently tracked. These include time spans for processes. For example: it takes ten minutes to research exemptions in TEAMS, as well as outputs from the processes such as the number of liens filed monthly. Time spans for processes are often estimates by the TPL Unit. These metrics are not tracked, but are estimated based on staff's experience.

2.2. Liens

Liens are the Department's most effective tool for recovering monies spent funding long term care. Montana only uses TEFRA, or pre-death liens, and uses liens only for individuals in nursing facilities. TEFRA liens establish the Department's legal right to collect a debt from a home or property, which will be used to repay the money Medicaid spent on a recipient's nursing facility costs after the recipient and her or his spouse die. A lien is not a claim, but rather the notice. The claim occurs later in the estate recovery process.

The following diagram outlines the entire lien process from lien research through its completion. The diagram can be read as a decision tree containing more than one option for many steps. The direction the process takes depends on specific decisions and circumstances within each case. Note how the lien process may connect to the estate recovery probate process in the upper right hand side of the diagram.

As-Is Lien Process Overview



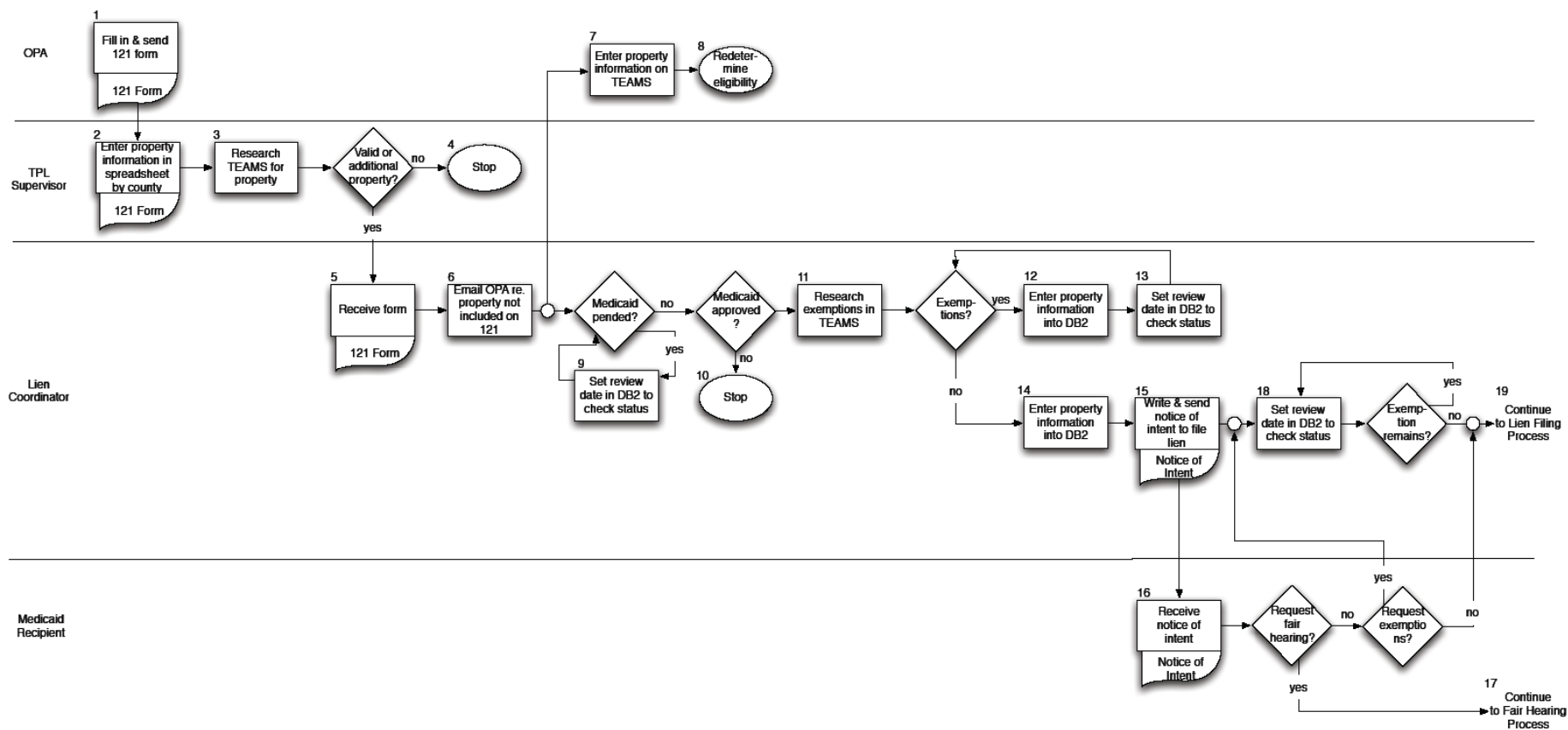
2.2.1. Lien Research

2.2.1.1. Overview

The Department has to conduct background research before the State can file a lien. The lien coordinator must receive information about a nursing facility applicant's property from the Office of Public Assistance to trigger the research process.

2.2.1.2. Process Map

As-Is Lien Research Process



2.2.1.3. Process Map Step-by-Step Narrative

1. Trigger: A nursing facility applicant completes a 121 Form with the OPA eligibility worker at the time of application. The OPA worker must remember to request the form. It is a paper form that requires more information regarding assets than TEAMS. The 121 Form is forwarded to the Department.
2. The TPL supervisor at the Department receives the form and logs the property into a spreadsheet by county.
3. The TPL supervisor researches whether the property exists and also looks to see if the applicant has other property in addition to what is listed on the form.
4. If the property does not exist, the 121 Form is not forwarded to the lien coordinator and the process stops.
5. If the property does exist and/or new property is discovered, the TPL supervisor forwards the 121 Form to the lien coordinator.
6. The lien coordinator informs the OPA office of any additional, unlisted property that the Department has verified.
7. The eligibility worker at the OPA office enters any new property into TEAMS.
8. The eligibility worker ensures that the applicant is still eligible for Medicaid with the additional property.
9. The lien coordinator checks an applicant's Medicaid status. If the application is pending, the lien coordinator sets a review date to check on the Medicaid status again in the near future.
10. If the application is denied, the lien process stops.
11. If the application is approved, the lien coordinator researches possible exemptions in TEAMS.
12. For applicants with exemptions, the lien coordinator enters the property information into TortTracker.
13. For applicants with exemptions, the lien coordinator enters a review date into TortTracker to check the status of the exemption. The amount of time allowed until the next review varies depending on the type of exemption.
14. For applicants without exemptions, the lien coordinator also enters the property information into TortTracker.
15. The lien coordinator writes and sends a notice of intent to file the lien.
16. The Medicaid recipient receives the notice of intent for the TEFRA lien.
17. If the recipient decides to request a fair hearing, the fair hearing process begins.
18. If the recipient requests additional exemptions, the lien coordinator sets a review date in TortTracker to check the status of the exemption. If the exemption remains valid, the lien coordinator resets the review date in TortTracker again. This loop continues until the exemption ceases to exist.

19. If the recipient does not request additional exemptions, or if requested exemptions clear, the lien filing process begins.

2.2.1.4. Current Metrics

1. The TPL supervisor usually retains 121 Forms for one to five days before passing them on to the lien coordinator.
2. The TPL supervisor receives about seven 121 Forms daily.
3. The lien coordinator researches exemptions for each applicant in approximately ten minutes.
4. Approximately 95 percent of individuals with real property have an exemption.
5. Medicaid applicants/recipients have 30 days in which to return the questionnaire.
6. Approximately 60 percent of Medicaid recipients/applicants have a spouse.
7. Approximately 25 percent of Medicaid recipients die before a lien can be filed.
8. Liens are valid for six years.

2.2.2. Lien Filing

2.2.2.1. Overview

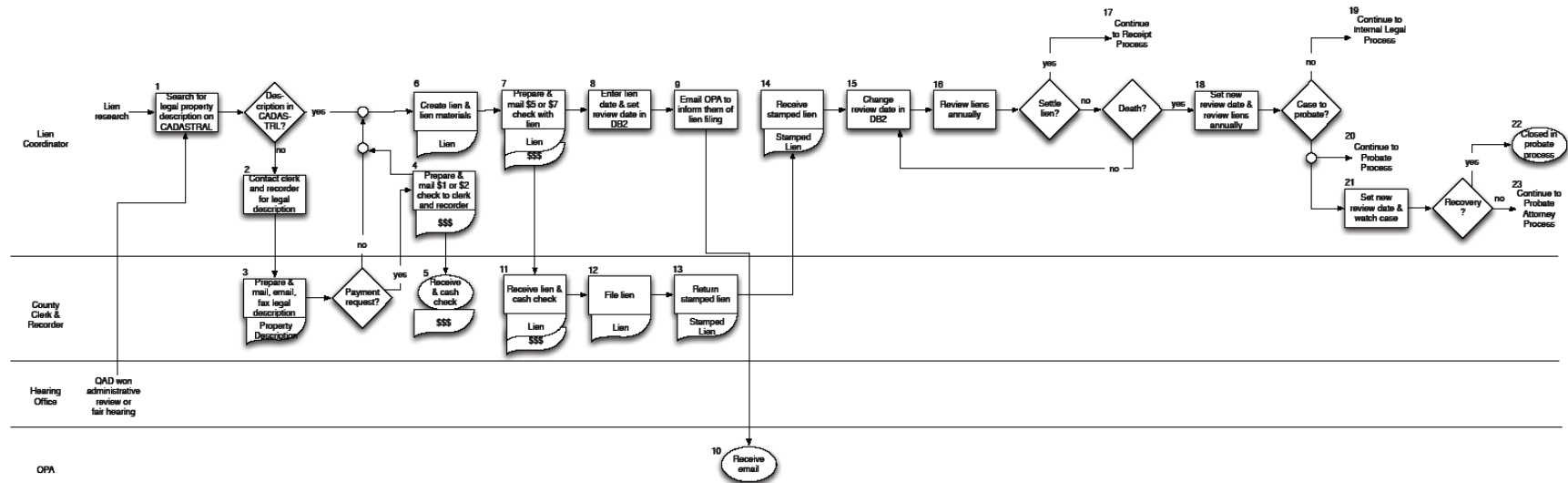
The lien research process leads to the lien filing process. This is the process used by the lien coordinator to place a lien against a Medicaid recipient's real property. The lien coordinator learns about property by receiving 121 Forms, which the OPA eligibility worker completes when an individual applies for nursing facility services; or when an OPA learns about real property from other sources and forwards the information to the lien coordinator.

Liens can only be filed when certain circumstances are met. The TPL Unit may not file a lien when:

- The recipient has an intent to return home. A lien can be filed after the recipient has resided in a nursing facility for six months. The intent to return home is no longer valid at that point.
 - The recipient's spouse was determined to be living in the home.
 - The recipient's child was under the age of 21, blind, or permanently disabled.
 - The recipient had a sibling living in the home who lived in the home for at least 18 months immediately prior to the recipient's institutionalization.
 - The recipient's property is Tribal Trust Land.
- OR**
- The recipient's real property is located outside of Montana.

2.2.2.2. Process Map

As-Is Lien Filing Process



2.2.2.3. Process Map Step-by-Step Narrative

Triggers: The lien filing process is either triggered by the completion of the lien research process or by QAD winning an administrative review or a fair hearing.

1. The lien coordinator searches for the legal property description on Cadastral.
2. If the description is not on Cadastral, the lien coordinator contacts the clerk and recorder for the description.
3. The clerk and recorder prepares and sends the legal property description to the lien coordinator.
4. The clerk and recorder may request payment for preparing and sending the description. If s/he does, the lien coordinator will send a one or two dollar check to the clerk and recorder.
5. The clerk and recorder will receive and deposit the check.
6. Once the legal property description is in hand, the lien coordinator creates a lien and the associated materials.
7. The lien coordinator mails the lien materials with a five or seven dollar check to the clerk and recorder. The amount she sends depends on the county.
8. The lien coordinator enters the lien date into TortTracker and sets a review date of a month from the mailing date to ensure she receives the stamped lien back from the county.
9. The lien coordinator emails the county OPA office to let them know that she has filed a lien.
10. The OPA office receives the email.
11. The clerk and recorder receive the lien and check from the lien coordinator and deposits the check.
12. The clerk and recorder files the lien.
13. The clerk and recorder stamps the lien and returns it to the lien coordinator.
14. The lien coordinator receives the stamped lien.
15. The lien coordinator enters a review date of one year in the future into TortTracker. This review date will be updated every year if the Medicaid recipient does not die and/or does not settle the lien.
16. The lien coordinator reviews the liens annually.
17. If the recipient settles the claim, the receipt process begins.
18. If the lien coordinator reviews the case and discovers that the Medicaid recipient died, she will set a new review date to monitor the lien annually to ensure the lien is settled through probate.
19. If the case does not go to probate court, the internal legal process begins.

20. If the case goes to probate, the probate process begins. The lien coordinator continues to monitor the case to ensure the lien is settled.
21. The lien coordinator sets a review date to monitor the lien as it continues through the probate process.
22. If the state recovers against the lien in probate, the lien is closed through the probate process.
23. If the case does not settle in probate, the probate attorney process begins.

2.2.2.4. Current Metrics

1. The lien coordinator can find the legal property description on Cadastral about 50 percent of the time.
2. The total number of liens filed monthly is tracked.

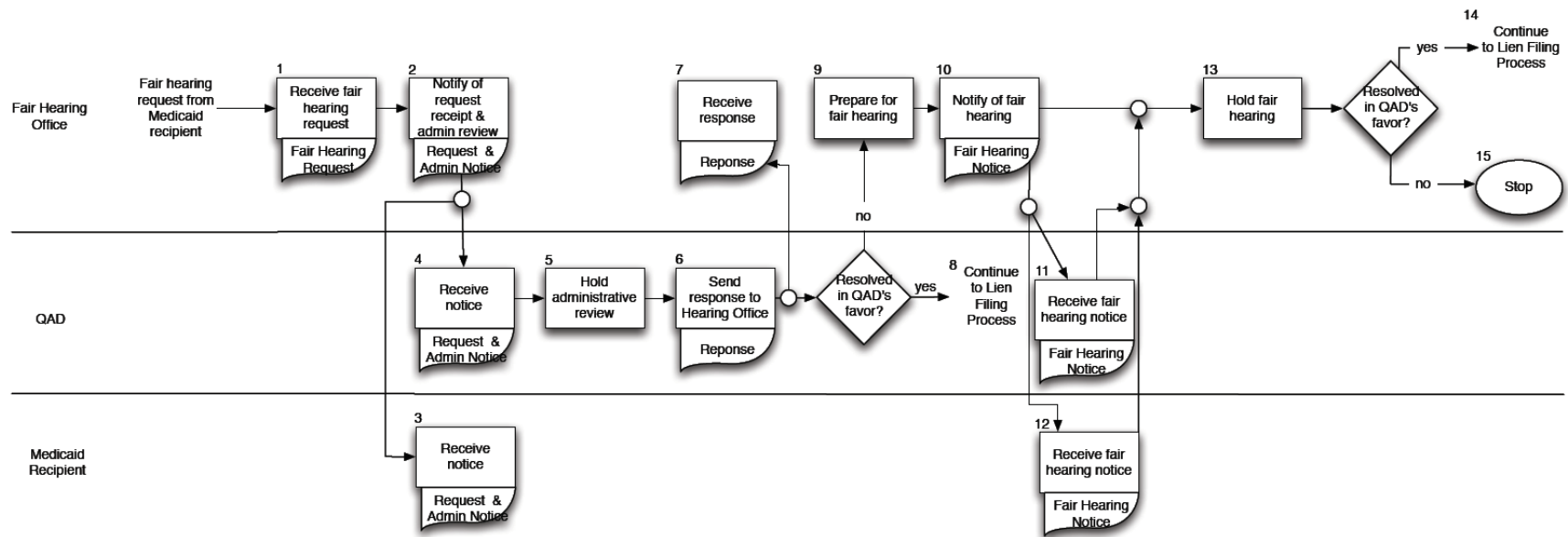
2.2.3. Fair Hearing

2.2.3.1. Overview

Before a lien can be imposed under Montana State Law Section 53-6-171, Medicaid recipients have the opportunity to request a hearing to appeal the Department's decision to impose the real property lien. The fair hearing process enables Medicaid recipients to challenge the Department's decision to file a real property lien. To request a fair hearing, Medicaid recipients must submit a hearing request in writing to the hearing officer at the Department of Public Health and Human Services. A Medicaid recipient may also receive assistance for submitting the fair hearing request by working with their OPA eligibility case worker or by completing the *Fair Hearing Request* section of the notice of intent to file a lien questionnaire. In order for the Department to exercise their lien filing option, the Department must notify the Medicaid recipient of their right to a fair hearing request while they are living.

2.2.3.2. Process Map

As-Is Fair Hearing Process



2.2.3.3. Process Map Step-by-Step Narrative

1. Trigger: The Fair Hearing Office receives a completed fair hearing request. The Medicaid recipient must submit their fair hearing request in writing within thirty (30) days from the receipt date of the Department's notice of intent to file a lien letter.
2. The Fair Hearing Office notifies the QAD and the Medicaid recipient of receipt of the request.
3. The Medicaid recipient receives the notice from the Fair Hearing Office.
4. QAD receives the notice from the Fair Hearing Office.
5. QAD conducts an administrative review of the Medicaid recipient's request to challenge the Department's intent to file a lien.
6. QAD sends the review results to the Fair Hearing Office within 20 days of original notice.
7. The Fair Hearing Office receives the review results.
8. If the results are in support of QAD, the fair hearing process stops and the lien filing process begins.
9. If the administrative review results in a decision in favor of the Medicaid recipient, a fair hearing may or may not take place. If the fair hearing takes place, the Fair Hearing Office prepares the necessary information and materials for the hearing between QAD and the Medicaid recipient.
10. The Fair Hearing Office notifies QAD and the Medicaid recipient that a fair hearing has been granted.
11. QAD receives notification of the Fair Hearing Office decision to proceed with the hearing.
12. The Medicaid benefit recipient or estate representative receives notification of the Fair Hearing Office decision to proceed with the hearing.
13. The Fair Hearing Office conducts the hearing.
14. If the hearing results in a decision to support the QAD, the fair hearing process stops and the lien filing process begins.
15. If the hearing results in a decision on behalf of the Medicaid recipient, a medical services lien is not imposed.

2.2.3.4. Current Metrics

1. Medicaid benefit recipients must submit a fair hearing request within 30 days from the receipt date of the notice of intent to file a lien letter.

2. The questionnaire must be completed and returned to Department's estate recovery representative of the Third Party Liability Unit, within ten days of receipt of the questionnaire.
3. The TPL Unit has received three fair hearing requests in the last five years.

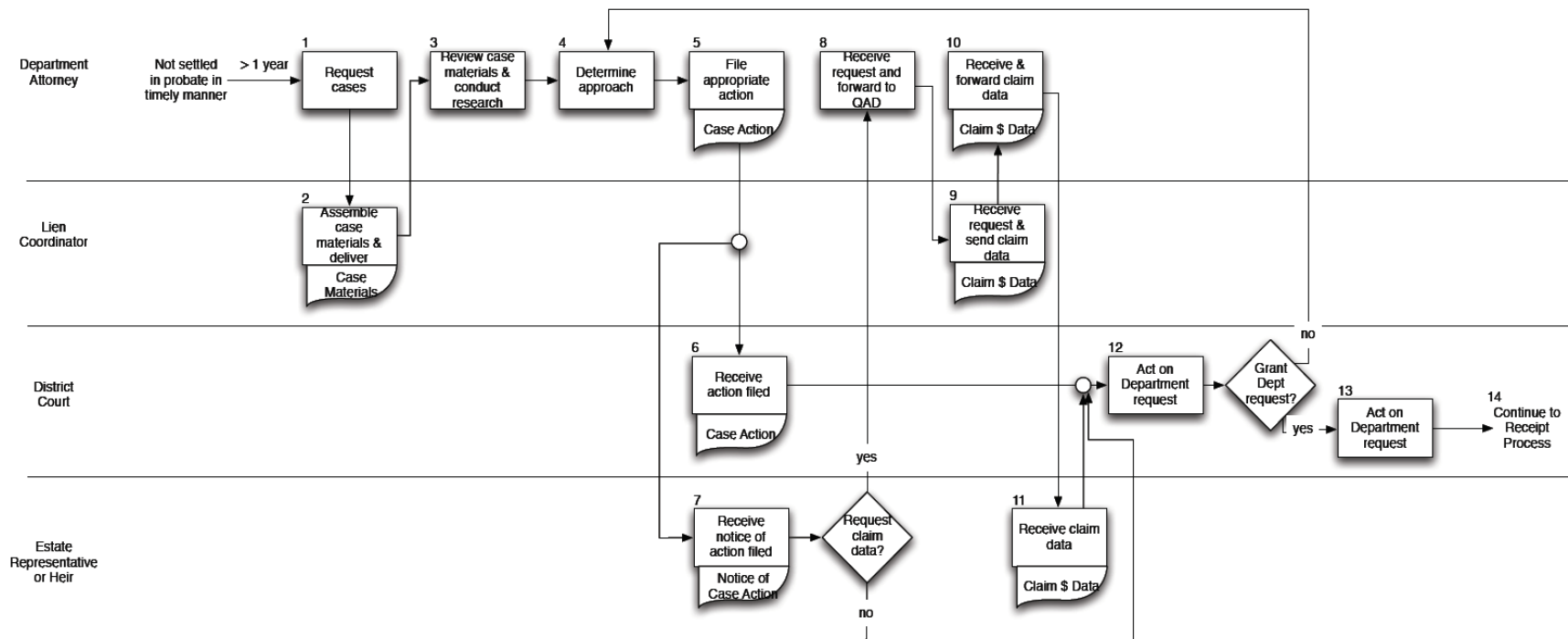
2.2.4. Probate Attorney

2.2.4.1. Overview

The Department's attorney plays a key role in estate recovery when claims remain unsettled in probate for a long period of time. The lien and estate coordinators queue cases needing the attorney's attention, and wait for the attorney to request additional cases.

2.2.4.2. Process Map

As-Is Probate Attorney Process



2.2.4.3. Process Map Step-by-Step Narrative

Trigger: Cases not settled in probate queue, awaiting Department attorney action.

1. The Department attorney contacts the lien coordinator to request one or more cases that await settlement. The request is based on the attorney's caseload and availability. Typically, unsettled cases are more than a year old.
2. The lien coordinator assembles the case and submits a copy of the case file to the Department attorney for review and further research.
3. The Department attorney receives, reviews, and conducts research on the case as appropriate.
4. The Department attorney determines an appropriate estate recovery approach based on case file information.
5. The Department attorney files the appropriate action in district court based on the established approach, and sends a notice of action to the estate representative or heir.
6. The district court receives the action filed by the Department attorney.
7. The estate representative or heir receives a copy of the action filed in district court.
8. If the estate representative or heir decides s/he needs specific claim total data from the Department, they send a request to the Department attorney. The Department attorney receives the request and forwards it for information to the lien coordinator.
9. The lien coordinator receives the request for claim total data, obtains the data, and submits it to the Department attorney for review and subsequent distribution to the estate representative.
10. The Department attorney receives the claim total data from the lien coordinator and forwards the data to the estate representative or heir.
11. The estate representative or heir receives the claim total data.
12. The district court proceeds with the probate process based on the action filed by the Department attorney. If the district court grants the Department their request, the Department will receive payment for the total claim amount due. If the district court does not grant the Department their request, the Department's attorney reassesses the progress of the case and determines whether there are other legal options to pursue in order to recover Medicaid funds.
13. If the district court grants the Department their request, the court executes the request, and the estate must satisfy the total claim amount owed to the Department.
14. The receipt process begins.

2.2.4.4. Current Metrics

1. Probate cases are typically older than 1 year by the time they are initially requested for review by the Department's attorney.
2. The lien coordinator takes about 45 minutes to prepare cases for the Department attorney.

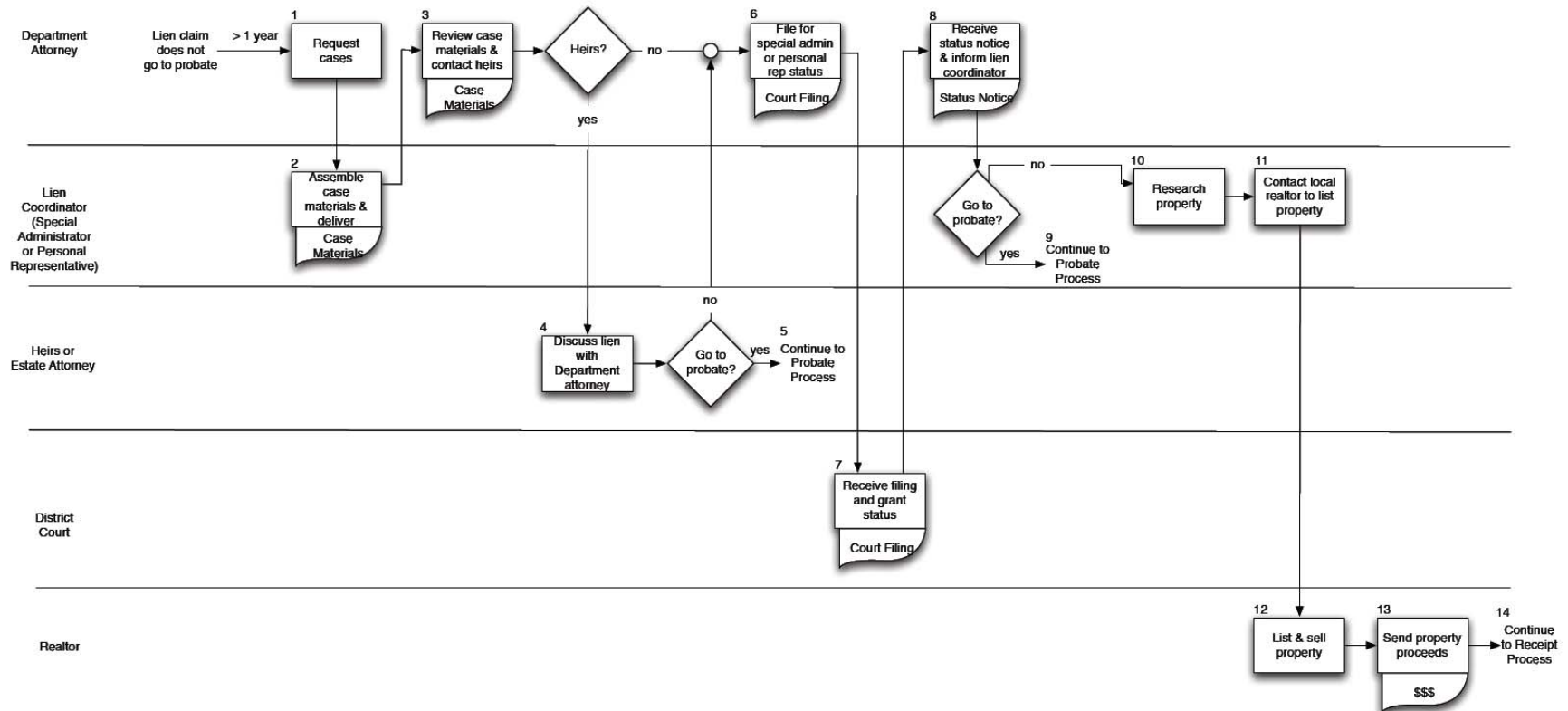
2.2.5. Internal Legal

2.2.5.1. Overview

The internal legal process occurs when a deceased Medicaid recipient's real property does not go to probate. These liens would remain unresolved unless the Department takes action. The Department attorney's primary responsibility is to support the lien coordinator to legally establish her role as the estate's representative. In doing so, the attorney files an action in district court requesting that the lien coordinator be granted special administrative or personal representative status on behalf of the estate for the purpose of recovering Medicaid funds. In a non-probate case, the Department's attorney serves in an advisory role to the lien coordinator, intervening in the estate recovery process on an as-needed basis. The lien coordinator, acting as the estate representative, either moves the estate to the probate process or sells the property and settles the recipient's lien with the Department.

2.2.5.2. Process Map

As-Is Internal Legal Process



2.2.5.3. Process Map Step-by-Step Narrative

1. Trigger: The Department attorney contacts the lien coordinator to request one or more cases that have not gone to probate. The request is based on the attorney's caseload and availability. Typically, unsettled cases are more than one year old.
2. The lien coordinator assembles the case and submits a copy of the case file to the Department attorney for review and further research.
3. The Department attorney receives, reviews, and conducts research on the case as appropriate. If there are heirs or an estate attorney named in the case file information, the attorney contacts them.
4. The Department attorney and the heirs or estate attorney discuss the lien and moving it to probate.
5. If the heirs or estate attorney decide to bring the case to probate, the probate process begins.
6. If the heirs or estate attorney determines that the case will not go to probate, the Department's attorney files for special administrative or personal representative status with the district court.
7. The district court receives the special administrative or personal representative status filing and grants the status to the lien coordinator.
8. The Department attorney receives notice of the court's decision to formally permit the lien coordinator to act as the estate's representative. The Department informs the lien coordinator of the court's decision.
9. If the lien coordinator decides to move the case to probate, the probate process begins. This is generally the outcome of these cases.
10. If the lien coordinator decides not to go to probate, the lien coordinator may try to sell the property to settle the lien. In this case, the lien coordinator researches and confirms the estate's real property.
11. The lien coordinator contacts a realtor to list and subsequently sell the property for the purpose of recovering Medicaid funds.
12. The realtor lists and sells the estate's real property.
13. The realtor works with the title company and sends payment to the Department to satisfy the claim. Remaining proceeds are distributed to the named beneficiaries of the estate.
14. The receipt process begins.

2.2.5.4. Current Metrics

1. These cases are typically older than 1 year by the time they are initially requested for review by the Department's attorney.

2. The lien coordinator takes about 45 minutes to prepare cases for the Department attorney.

2.2.6. Lien Release

2.2.6.1. Overview

A medical assistance lien is released when the Department receives payment in full or receives the net proceeds from the sale of the Medicaid recipient's real property to satisfy the cost of Medicaid benefits provided. A medical assistance lien is formally released when the lien coordinator files a Release of Medical Assistance Lien letter with the County Clerk and Recorder of the courthouse. The lien release process is typically initiated when the lien coordinator receives notice from a title company requesting that the Department release the lien. The lien coordinator researches and calculates the total claim amount and submits it to the title company for subsequent payment upon the sale of the real property. Upon receipt of payment and a copy of the closing paperwork from the title company, the Department creates and files the notice of lien release.

A lien may also be released in the event of the following occurrences:

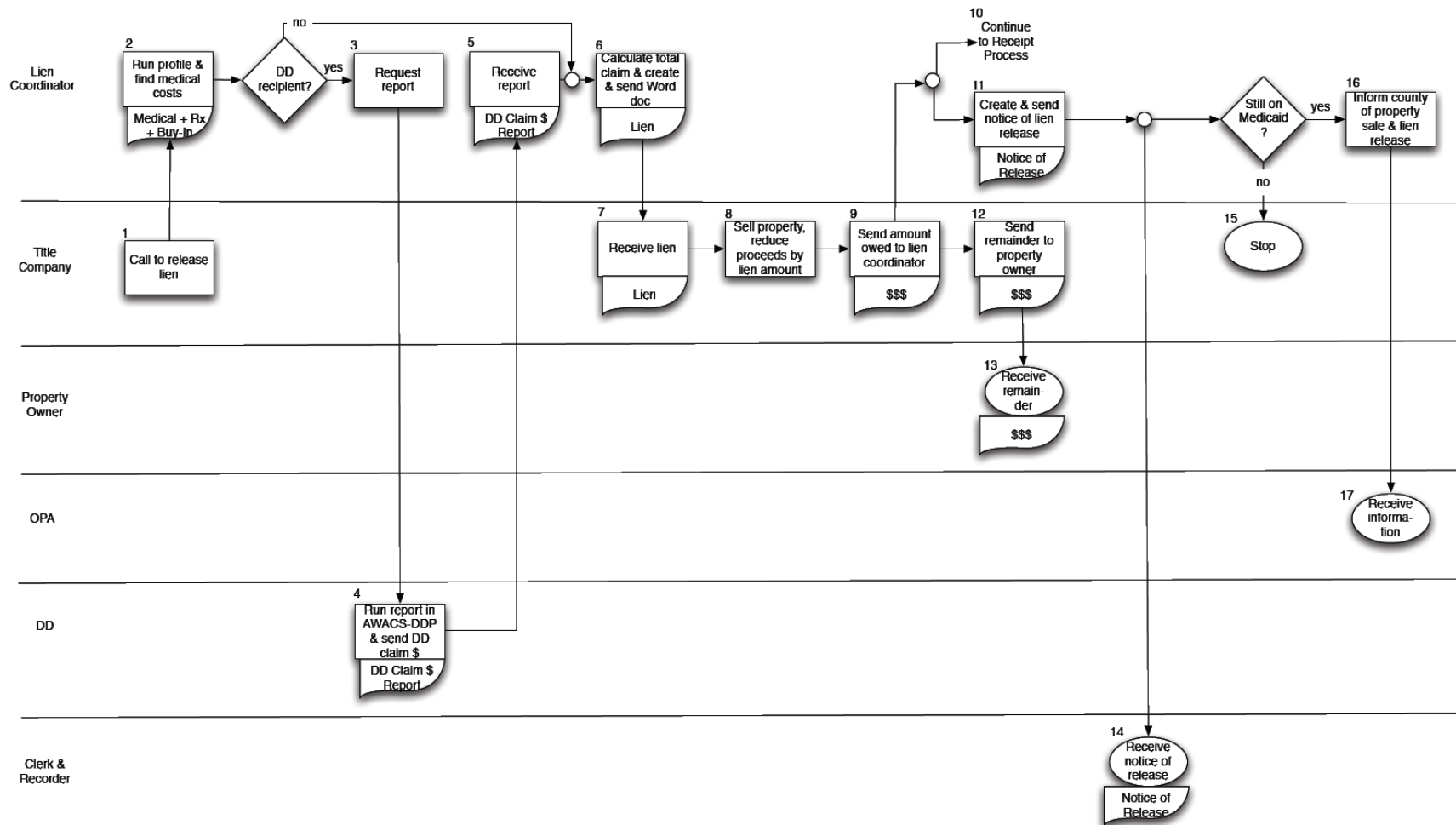
- A lien was incorrectly filed.
- The Department waives recovery in demonstrated cases of undue hardship.

When a medical assistance lien has been incorrectly filed, the Department's lien coordinator releases the lien by filing the notice of lien release with the courthouse and notifies the OPA eligibility case worker of the action taken. The lien coordinator also updates the lien information in TortTracker to reflect the release action.

The medical assistance lien is also released when the Department decides to waive, in whole or in part, recovery upon a lien if the Medicaid benefit recipient demonstrates that recovery would result in an undue hardship. The TPL Unit reviews waiver of recovery requests upon receipt of a completed waiver of recovery application and subsequently determines whether to waive recovery. If recovery is waived, the lien is released as described above. Recipients may obtain the waiver of recovery application form from the TPL Unit or from a local OPA office.

2.2.6.2. Process Map

As-Is Lien Release Process



2.2.6.3. Process Map Step-by-Step Narrative

1. Trigger: The title company contacts the lien coordinator to notify the Department of an upcoming property sale and request a lien release.
2. The lien coordinator runs separate reports in the MMIS to obtain the recipient's medical, and pharmacy costs. The lien coordinator manually calculates the recipient's buy-in costs.
3. If the recipient received Medicaid developmental disabilities services, the lien coordinator requests a report on these costs from DD.
4. DD executes a report in AWACS-DDP to identify DD claim amounts, and sends the report to the lien coordinator.
5. The lien coordinator receives the DD claim total and combines it with the other Medicaid costs.
6. The lien coordinator calculates the total amount Medicaid paid for claims on behalf of the recipient and submits the amount to the title company for subsequent payment.
7. The title company receives the amount owed to the Department upon the sale of the real property.
8. The title company sells the property.
9. The title company sends a check to the TPL program officer to satisfy the lien.
10. The payment continues to the receipt process.
11. The lien coordinator establishes a notice of lien release and submits it to the clerk and recorder.
12. The title company sends any remaining monies from the sale of the property to the property owner.
13. The property owner receives the proceeds from the property sale.
14. The clerk and recorder receives a copy of the lien release notice from the lien coordinator.
15. If the recipient is no longer receiving Medicaid benefits, the lien release process stops.
16. If the Medicaid recipient is still receiving Medicaid benefits, the lien coordinator notifies the county OPA office of the lien release.
17. The OPA receives the lien release information.

2.2.6.4. Current Metrics

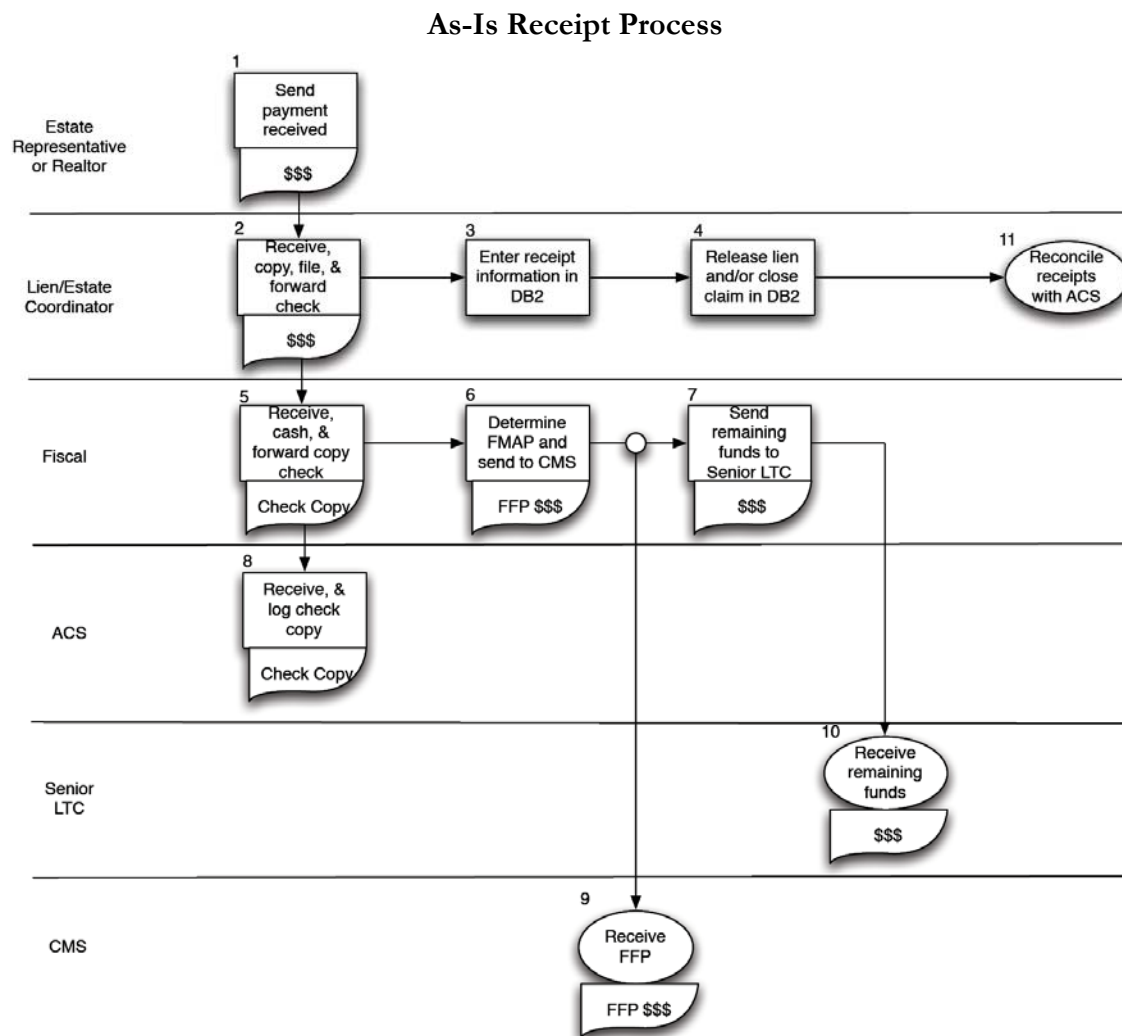
There are no metrics currently associated with the lien release process.

2.2.7. Receipt

2.2.7.1. Overview

Payment can be received at many places in both the lien and estate recovery processes. The lien and estate coordinators receive checks from Medicaid recipients, their families, their estate representatives, realtors, nursing facilities, funeral homes, and banks. The recovered monies are reinvested in Montana's Senior Long Term Care Division.

2.2.7.2. Process Map



2.2.7.3. Process Map Step-by-Step Narrative

1. Trigger: A debtor sends a payment to the lien or estate coordinator.

2. The lien or estate coordinator receives payment, makes a copy of the check, and forwards the received payment to the Fiscal Services Bureau for deposit (or to be cashed if it is in check form).
3. The lien or estate coordinator enters the receipt information in TortTracker.
4. The lien or estate coordinator releases the lien and/or closes the claim in TortTracker.
5. The Fiscal Services Bureau accepts the receipt, makes a copy of the check, and forwards a copy to ACS.
6. The Fiscal Services Bureau prepares the FMAP amount for payment to CMS and sends the payment to CMS (the current FMAP for Montana Medicaid is 68 percent).
7. The Fiscal Services Bureau forwards any remaining funds to the Senior Long Term Care Division.
8. ACS receives a copy of the check from the Fiscal Services Bureau and records the check to their receipt log.
9. CMS receives the reimbursement amount from the Department on behalf of Montana Medicaid.
10. Senior Long Term Care Division receives the remaining money.
11. The lien or estate coordinator reconciles payments received by the Department, with those recorded by ACS.

2.2.7.4. Current Metrics

1. Receipt reconciliation between the TPL Unit and ACS typically occurs one month after receipt is recorded and the claim is closed in the Tort Tracker database.
2. CMS must be reimbursed within 60 days of recovery.
3. Total monies distributed to CMS and the Senior Long Term Care Division are tracked by the Fiscal Services Bureau.
4. Lien and estate recovery totals are tracked.

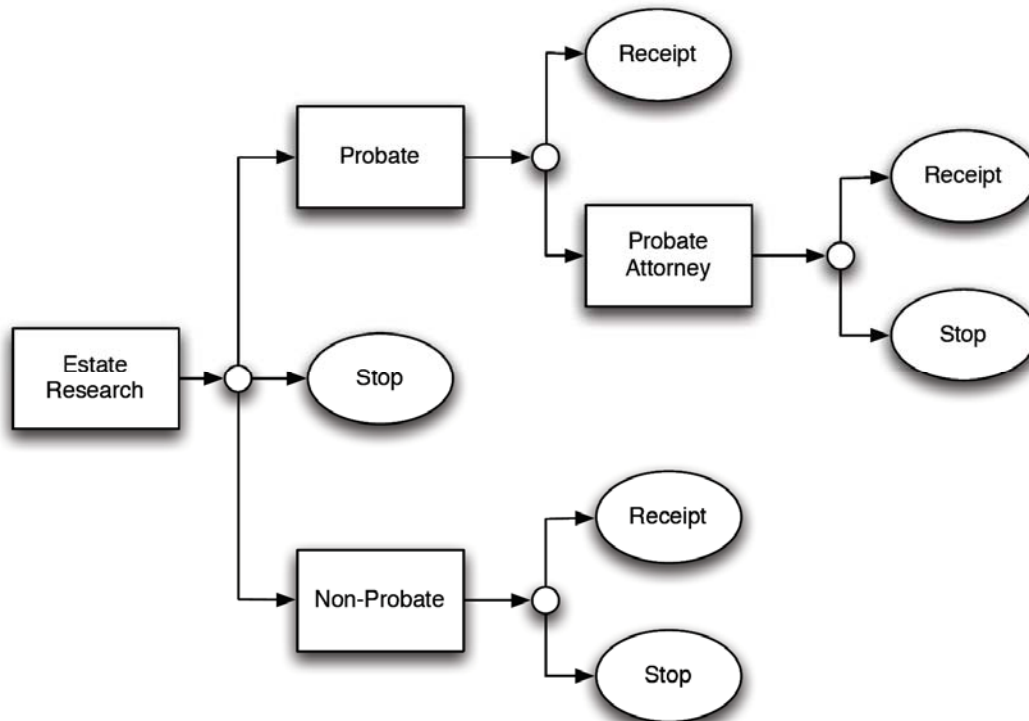
2.3. Estate Recovery

Montana's DPHHS attempts to repay funds spent on long term care Medicaid costs through estate recovery. Estate recovery occurs after both the Medicaid recipient and his or her spouse have died.

Similarly to the lien process, the estate recovery process begins with the TPL Unit conducting research. The estate coordinator identifies Medicaid recipient deaths through a number of sources. From research, the process continues either through probate court or outside of probate court. The cases that do not go to probate typically have only small accounts against which the estate coordinator may recover.

The following diagram outlines the overall estate recovery process. As with the lien diagram, the estate recovery diagram can be read as a decision tree containing more than one option for many steps. The direction the process takes depends on specific decisions made and circumstances within each case.

Estate Recovery Process Overview



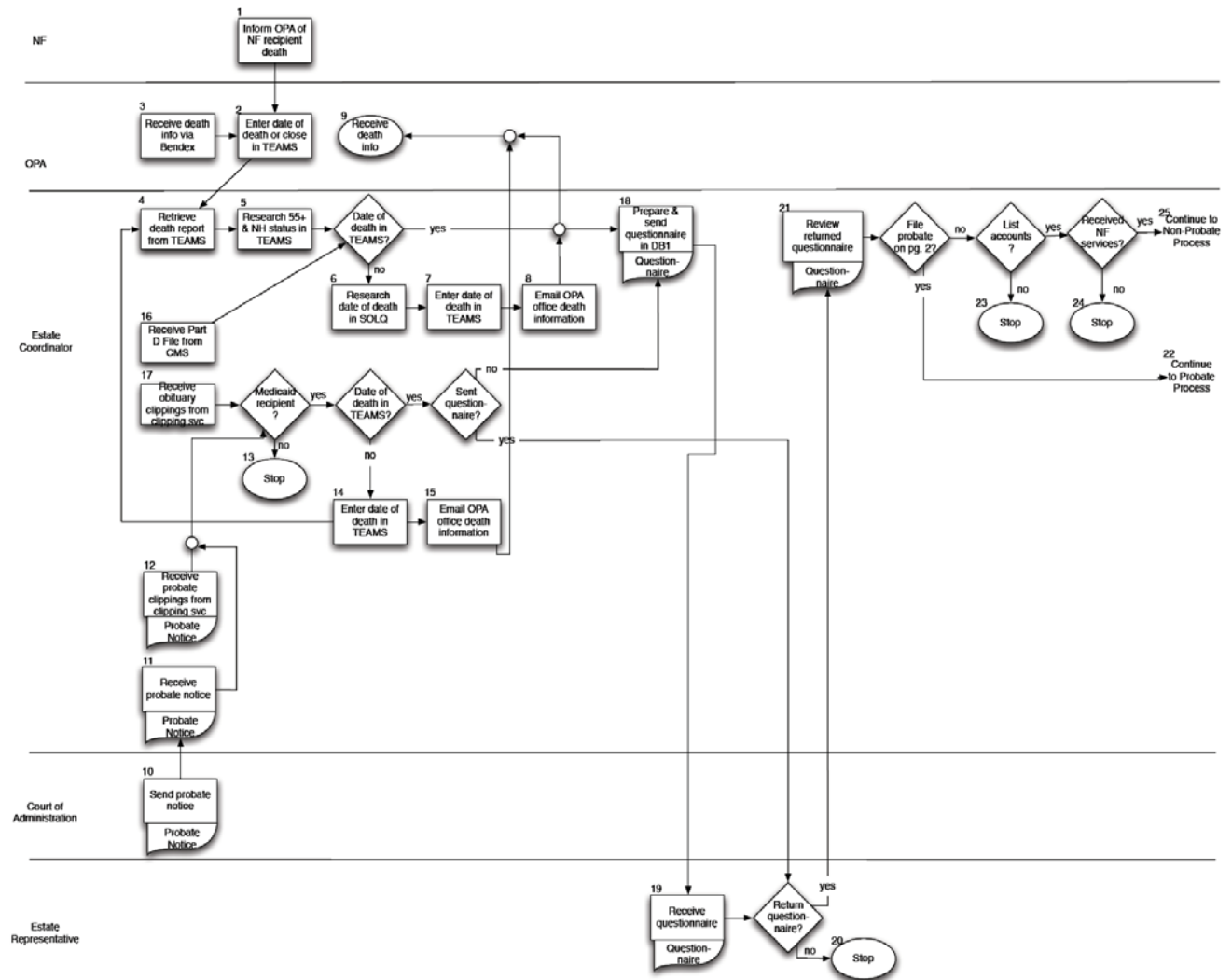
2.3.1. Estate Research

2.3.1.1. Overview

Estate research is the beginning of the Department's Medicaid recovery process. In the estate research process, multiple electronic systems are used for discovering and tracking information: TEAMS and two Access databases developed in-house. The estate coordinator also relies heavily on paper files of information, paper obituary clippings, and paper probate notices.

2.3.1.2. Process Map

As-Is Estate Research Process



2.3.1.3. Process Map Step-by-Step Narrative

1. Trigger: The nursing facility informs the OPA of the death of a resident Medicaid recipient.
2. OPA staff enter the date of death into the TEAMS system or close the case in TEAMS.
3. Trigger: OPA staff receive a list of deceased recipients from Bendex. They then enter the date of death in TEAMS or close the case in TEAMS (Step 2).
4. Trigger: The estate coordinator retrieves the death report from Document Direct in TEAMS once a week.
5. The estate coordinator looks on TEAMS to verify whether the deaths included in the report are for individuals either 55 or older or who resided in a nursing facility.
6. If the date of death is not in TEAMS, the estate coordinator researches date of death in SOLQ.
7. The estate coordinator enters in TEAMS the date of death found in SOLQ.
8. The estate coordinator emails OPA staff to give them date of death information, then prepares and sends the questionnaire (Step 18).
9. OPA staff receive death information from the estate coordinator.
10. Trigger: The Court of Administration sends probate notices to the estate coordinator.
11. The estate coordinator receives probate notices from the Court of Administration and determines if the decedent involved was a Medicaid recipient.
12. Trigger: The estate coordinator receives copies of probate notice clippings from a statewide clipping service, and determines if decedents were Medicaid recipients.
13. If the decedent was not a Medicaid recipient, the process stops.
14. If the decedent was a Medicaid recipient the estate coordinator checks for the date of death in TEAMS. If TEAMS does not have a date of death, the estate coordinator enters it. For those with dates of death in TEAMS, the process skips ahead to 18, 20, and 21.
15. The estate coordinator emails the OPA office to inform them of the date of death. The OPA county office receives it (Step 9).
16. Trigger: The estate coordinator receives death information from CMS Medicare Part D file. The estate coordinator checks if the date of death is in TEAMS, repeating steps 6, 7, and 8.
17. Trigger: The estate coordinator receives obituary clippings from a clipping service on a weekly basis. The estate coordinator checks if the decedents are Medicaid recipients, repeating step 13, and if they have a date of death entered in TEAMS. If TEAMS does not have a date of death, she repeats steps 14 and 15.
18. When Medicaid decedents have been identified and the date of death information is known and entered in TEAMS, the estate coordinator prepares and sends a questionnaire to the estate representative with a notice to respond within 30 days.

19. The estate representative receives the Medicaid estate questionnaire.
20. If the estate representative does not respond with a completed questionnaire, the process stops.
21. The estate coordinator receives the returned questionnaires.
22. If the estate representative indicates that the case is going to probate, the estate research process stops and the probate process begins.
23. If the estate is not going to probate, the estate coordinator checks to see whether the estate representative listed recoverable accounts. If there are none, the process stops.
24. If there are recoverable accounts, the estate coordinator checks to see whether the Medicaid recipient received nursing facility services. If the individual did not, the process stops.
25. If the Medicaid recipient has recoverable accounts and did receive nursing facility services, the the non-probate process begins.

2.3.1.4. Current Metrics

1. Reviewing and processing the weekly probate clippings typically takes two hours.
2. Probate notices arrive once monthly.
3. The obituary notices are on individual pieces of paper, anywhere from 100-600 in a delivery. They arrive approximately once a week but not on a predictable schedule. Processing the obituary clippings takes approximately two hours per week.
4. The number of questionnaires sent weekly is tracked and varies considerably.
5. Questionnaires are supposed to be returned within 30 days. Returned questionnaires are tracked. Unreturned questionnaires are not tracked.

2.3.2. Probate

2.3.2.1. Overview

The probate process begins after estate research has concluded, when estate questionnaires return information indicating that the estate representative has filed probate.

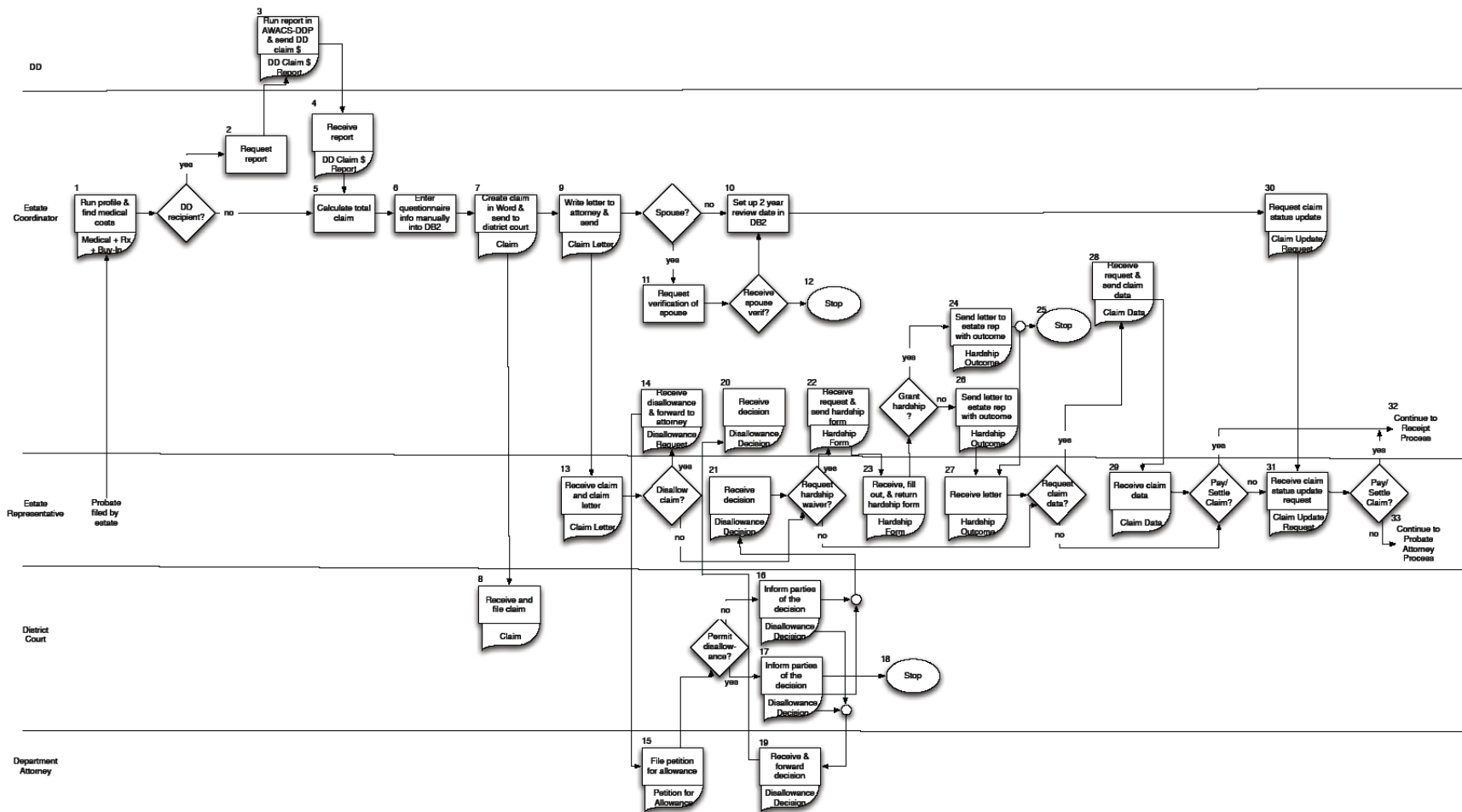
The estate coordinator must check for exemptions before filing for probate. Currently, the coordinator checks to see whether the decedent has a living spouse, and does not seek out other exemptions used in lien filing.

The estate coordinator handles many of the estate probate recovery cases independently, involving a department attorney only as needed. The department in turn requests assistance from the state attorney with complex or backlogged cases, which is relatively invisible to the process.

Small estates of less than \$50,000 in value do not go through the legal probate process, and can close in as little as 30 days. Because of their short time frame, the current probate process is not capturing small estate closures effectively.

2.3.2.2. Process Map

As-Is Probate Process



2.3.2.3. Process Map Step-by-Step Narrative

Trigger: The estate representative files for probate.

1. The estate coordinator runs a profile to identify medical and pharmaceutical costs. She manually calculates and adds in Medicare Buy-In costs. The estate coordinator also determines if the individual received Developmental Disability (DD) services.
2. If the decedent received DD services, the estate coordinator requests a report of the amount spent on those services from DD.
3. DD runs a report in AWACS-DDP to determine the DD claim total, and returns the report to the estate coordinator.
4. The estate coordinator receives the DD report.
5. The estate coordinator calculates the total claim.
6. The estate coordinator manually enters the questionnaire information from the estate representative into TortTracker.
7. The estate coordinator creates a claim in Word and sends it to the appropriate district court.
8. The district court receives and files the claim in the probate case file.
9. The estate coordinator writes a letter to the attorney representing the estate.
10. The estate coordinator checks to see whether the deceased Medicaid recipient has a spouse. If the recipient does not have a spouse, the estate coordinator sets up a review date for two years in the future in TortTracker.
11. If the estate coordinator finds a spouse, she requests verification of the spouse's existence.
12. If she verifies that the recipient has a spouse, the case is closed. If she does not, she sets up a review date in TortTracker (Step 10).
13. The estate representative receives the claim and the accompanying letter, and decides whether to request a disallowance of the claim.
14. If the estate representative opts to disallow the claim, the estate coordinator receives the disallowance request and forwards it to the Department attorney.
15. When the Department attorney receives the disallowance request, s/he files a petition for allowance with the district court, who decides whether to permit or deny the disallowance.
16. If the district court does not permit the disallowance, the court informs the parties of the decision, who then may go on to request a hardship waiver (Step 18).
17. If the district court permits the disallowance, the court informs the parties of the decision.
18. The process stops if the district court permits the disallowance.

19. The Department attorney receives the disallowance decision and forwards it to the estate coordinator.
20. The estate coordinator receives the disallowance decision from the Department attorney.
21. The estate representative receives the disallowance decision from the district court and decides whether to request a hardship waiver.
22. If the estate representative requests a hardship waiver, the estate coordinator forwards the estate representative a hardship waiver request form.
23. The estate representative receives the hardship waiver request form, completes it, and returns it to the estate coordinator.
24. The TPL Unit determines whether the hardship waiver should be granted. If the hardship waiver is granted, the estate coordinator sends a letter to the estate representative with the outcome.
25. If a hardship waiver is granted, the process stops.
26. If the hardship waiver is not granted, the estate coordinator sends a letter to the estate representative with the outcome.
27. The estate representative receives the letter from the estate coordinator with the outcome of the hardship waiver request.
28. If the estate representative requests more claim information, the estate coordinator receives the request and sends the claim information back to the representative.
29. When the estate representative receives the detailed claim information, and decides either to pay the claim or wait without paying the claim.
30. If the estate coordinator does not receive payment from the estate representative within the two-year review timeframe set up in TortTracker, the estate coordinator requests a claim status update from the estate representative.
31. The estate representative receives the claim status update request from the estate coordinator, which may prompt them to pay the claim.
32. If the estate representative decides to pay the claim, the receipt process begins.
33. If the estate representative does not pay the claim, the probate attorney process begins.

2.3.2.4. Current Metrics

1. The number of claims closed per year is tracked.
2. The amount of claim recovery in dollars per year is tracked.
3. Recovery amounts from special needs trusts are tracked.
4. The Department has 60 days to file an allowance.

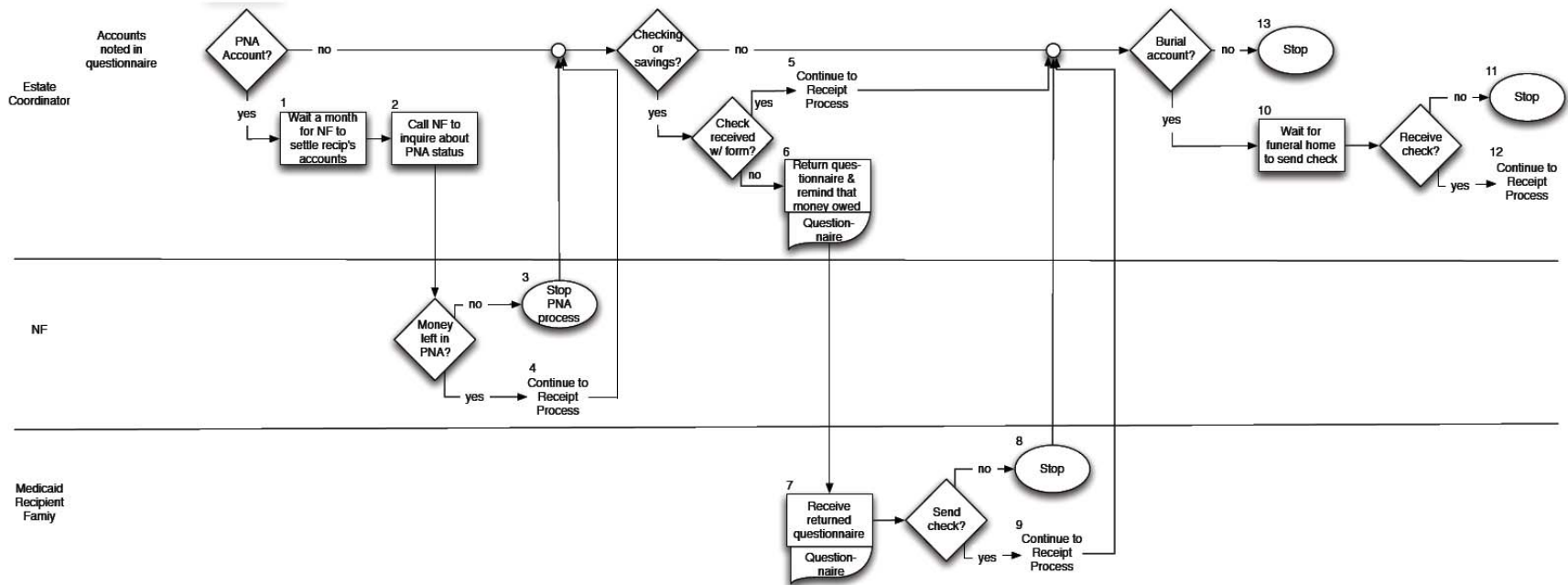
2.4. Non-Probate

2.4.1.1. Overview

Estate recovery does not always go through the probate process. The estate coordinator often collects money directly from nursing facilities, Medicaid recipients' families, and funeral homes. The sole trigger for the non-probate process is the questionnaire. Medicaid recipients' families fill in the questionnaire after their relative dies with probate and/or account information. This occurs in the estate research process. The non-probate process describes how the estate coordinator collects money in personal needs, checking, savings, and burial accounts that do not go to probate.

2.4.1.2. Process Map

As-Is Non-Probate Process



2.4.1.3. Process Map Step-by-Step Narrative

Trigger: The Medicaid recipient's family notes a personal needs banking, savings, and/or burial account on the returned questionnaire.

1. If the family notes that the Medicaid recipient had a personal needs account, the estate coordinator holds onto the form for one month to give the nursing facility time to settle the recipient's accounts.
2. After one month, the estate coordinator calls the nursing facility to inquire about the status of the personal needs account.
3. If there is no money left, the PNA collection process stops.
4. If there is money left in the personal needs account, the nursing facility will send the remaining funds to the estate coordinator. The non-probate process ends for PNA collection and continues with the receipt process.
5. If the family notes that the Medicaid recipient had a checking or savings account, and a check arrives with the questionnaire, the non-probate process ends for checking and savings account collection, and the receipt process begins.
6. If the family notes that the recipient had a checking or savings account, but no check arrives with the questionnaire, the estate coordinator returns the questionnaire to the family. She highlights the family's obligation to forward the remaining funds in the account to Medicaid.
7. The Medicaid recipient's family receives the returned questionnaire.
8. If the family does not send in a check, the non-probate process for checking and savings account collection stops.
9. If the family sends in a check, the non-probate process for checking and savings account collection stops and the receipt process begins.
10. If the family notes that the Medicaid recipient had a burial account, the estate coordinator expects for the funeral home to send in all unused funds.
11. If the funeral home does not send in a check, the non-probate process for burial account collection stops.
12. If the funeral home sends in a check, the non-probate process for burial account collection stops, and the receipt process begins.

2.4.1.4. Current Metrics

1. Recovery amount for personal needs accounts and burial accounts.

2.5. Probate Attorney

The probate attorney process is described in subsection 2.2.4.

2.6. Receipt

The receipt process is described in subsection 2.2.7.

SECTION 3. Best Practices

3.1. Introduction

This section describes practices defined by other states, vendors and researchers as best practices in Medicaid liens and estate recovery. Best practices research was conducted in an effort to provide DPHHS with information about what other states are doing in the areas of liens and estate recovery, as well as trends and promising practices at the national level. To these ends, we interviewed the estate recovery staff of nine states and estate recovery experts from CMS and HMS, and conducted a literature review. The following subsections do not precisely match the gap analysis in section 4, but we attempt to align the major themes. A reference list and a complete list of interviewees can be found in Appendices 6.3 and 6.6.

Each subsection contains information about an element of liens or estate recovery. Under each subsection header we include a brief summary of the issue. Below that we present information received from telephone interviews with estate recovery staff in other states, CMS, and vendors. Finally we present information gleaned from secondary sources – best practice literature and research findings on estate recovery.

Unless otherwise specified, the term “estate recovery” refers to both estate recovery and liens. Most states consider liens a form of estate recovery.

3.2. States Interviewed

Consultants interviewed the estate recovery staff of nine states. States were chosen based on the results of two initial interviews with Ginne Hain at CMS’s central office and Ben Chatman, HMS estate recovery expert based in Iowa. Ms. Hain and Mr. Chatman provided recommendations for states that have productive estate recovery programs and are not using HMS as a vendor for estate recovery services. In addition, we interviewed two states that are using HMS as a vendor and one using ACS.

States we interviewed that are doing estate recovery independently (i.e., not using HMS or another vendor) include Idaho, Minnesota, Ohio, Oregon, and Washington.

States we interviewed that outsource their estate recovery activities include Arizona, Iowa, Massachusetts and Wyoming.

Following is a table showing 12 states with benchmarking information. All states interviewed and Montana are included in this table. Although they were not interviewed for this report, Wisconsin and New Hampshire are also included because they are considered to be in the top tier of states doing estate recovery in-house (according to Mr. Chatman). Data in the table is presented in descending order according to Lien/Estate Recovery as Percent of Medicaid Spending on Long Term Care (column 6), and broken into two categories: 1) states doing estate recovery in-house and 2) states outsourcing estate recovery activities. Please note that the numbers and calculated percentages are for *approximated comparisons* only.

Data on total Medicaid spending and Medicaid spending on Long Term Care was found for the year 2006 only, whereas data on revenue from states' estate recovery program was found for the year 2004 only.

State	Total Medicaid Spending 2006 ⁴	\$ and % Medicaid Spending on LTC 2006 ⁵	Medicaid Payments per Elderly Enrollee 2005 ⁶	Revenue from Estate Recovery Program (Probate only) 2004 ⁷	L/ER as % of Total Medicaid Spending on LTC	Number of Estate Recovery Cases/ Year	Number of staff in L/ER Unit
In-House Estate Recovery Program							
Idaho	\$1,043,994,481	\$375,854,581 36.0%	\$15,614	\$5,695,851	1.5%	No data available	6
New Hampshire*	\$1,106,718,695	\$491,120,420 44.4%	\$17,733	\$4,362,641	.89%	No data available	No data available
Minnesota	\$5,666,177,093	\$2,853,833,034 50.4%	\$14,938	\$24,998,595	.88%	6,500/2007 (all cases in which the state collects)	6 (Counties do most recoveries)
Wisconsin*	\$4,653,047,015	\$2,032,212,637 43.7%	\$9,981	\$16,772,729	.83%	No data available	No data available
Montana	\$725,886,163	\$323,910,891 44.6%	\$15,122	\$2,363,322	.73%	262/2006 (Liens filed and ER claims filed)	2
Washington	\$5,579,368,299	\$1,816,015,575 32.6%	\$10,501	\$10,770,875	.59%	Open and close approx. 720 ER and Lien cases annually	14
Oregon	\$2,941,032,951	\$1,149,620,326 49.1%	\$10,863	\$13,843,592	.57%	8,541/2008	12
Ohio	\$12,251,082,457	\$5,544,474,823 45.3%	\$20,730	\$13,987,964	.25%	No data available	2 (dedicated to ER) 3 (shared FTEs)
Outsourced Estate Recovery Program							
Iowa (HMS)	\$2,614,996,813	\$1,216,854,085 46.5%	\$14,574	\$12,194,616/2004	1.0%	Open average of 10,000 annually	5 state staff liaison with HMS. (9 HMS staff do ER.)

⁴ From Kaiser State Health Facts.URL: <http://www.statehealthfacts.org/comparecat.jsp?cat=4>

⁵ Ibid.

⁶ Ibid.

⁷ 2004 TPL Collections. Excel Spreadsheet provided by Ben Chatman, HMS.

State	Total Medicaid Spending 2006 ⁴	\$ and % Medicaid Spending on LTC 2006 ⁵	Medicaid Payments per Elderly Enrollee 2005 ⁶	Revenue from Estate Recovery Program (Probate only) 2004 ⁷	L/ER as % of Total Medicaid Spending on LTC	Number of Estate Recovery Cases/Year	Number of staff in L/ER Unit
Massachusetts (University)	\$9,696,897,004	\$3,358,407,947 34.6%	\$16,083	\$32,577,301	.97%	Approx. 8,000 annually (Lien and ER)	20 (U. Mass)
Arizona (HMS)	\$6,195,618,153	\$1,483,339,273 23.9%	\$8,183	\$2,403,306	.16	138 ER cases 18 Lien cases	1 (Contract with HMS. 3 HMS staff dedicated to ER)
Wyoming (ACS)	\$421,403,854	\$204,787,195 48.6%	\$14,939	\$1,632,368	.79%	No data available	2 (Contract with ACS)

*Not interviewed for this report. Information presented for benchmarking purposes.

3.3. Emerging Themes from States Research – Best or Promising Practices in Lien and Estate Recovery

3.3.1. Liens

Many states use liens on real property as part of estate recovery. Liens put the heirs or estate representative on notice that an entity besides the owner has an interest in the property. There are two types of liens: pre-death, or TEFRA (Tax Equity and Fiscal Responsibility Act) liens, and post-death liens. States vary in their use of the two types of liens.

States Interviews

Oregon does not use liens as part of their estate recovery program because they do not believe it is cost effective. However, in lieu of liens the state files Requests for Notice on real property.

Ohio also does not use liens as part of their estate recovery program. Ohio indicates that they have good cooperation from the title companies and have little need for liens. Title companies are aware of Medicaid and estate recovery, and will contact the state if they believe there could be a claim on the property before any transactions take place.

See section 3.3.1.3 for more information about Requests for Notice.

3.3.1.1. TEFRA

Summary

Federal Medicaid law provides that states may impose pre-death, or TEFRA liens on the real property of Medicaid recipients determined to be “permanently institutionalized” and not returning home.

Best Practice Literature

According to a 2007 AARP study, “Protections in Medicaid Estate Recovery: Findings, Promising Practices and Model Notices,” 22 states, including Montana, use TEFRA liens.

The 2007 AARP study indicates that the major best practice regarding TEFRA liens is adequate and appropriate notice of the lien. In particular, notices of TEFRA liens are issued to individuals who are permanently institutionalized. These recipients are typically frail and require “timeliness, clarity, and readability.”⁸ Specifically, the study recommends the following regarding TEFRA lien notices:

- Make the title visible and clear to the reader and address the letter to the Medicaid recipient directly.
- Use a street address to describe the property, instead of or in addition to the legal address with lot numbers.
- Use at least 12-point font and wide spacing, spell out all acronyms, and avoid formatting letters in all-capitals or italics. Translate the notice into Spanish and other languages appropriate for the community.
- Send a brochure about estate recovery along with the notice and clearly explain the term “lien.”
- Define “permanently institutionalized.”
- Explain how to request a hearing and list resources for legal assistance.
- Explain exemptions and provide a form for requesting exemptions.
- Suggest that the reader solicit assistance if he or she does not understand the notice.⁹

Please see section 3.3.4 for more best practices in Public Relations and Community Education.

3.3.1.2. Post-Death Liens

Summary

Post-death liens are used to secure interest in a decedent’s estate in cases of deferral of recovery due to a surviving family member still residing on the property (i.e., sibling or adult child caregiver).

States Interviews

Washington liens the real property of any Medicaid recipient whose estate goes into probate. This gives the state leverage to recover on the property.

⁸ Erica F. Wood et al. “Protections in Medicaid Estate Recovery: Findings, Promising Practices and Model Notices.” AARP Public Policy Institute. Washington DC, 2007. p.11.

⁹ Ibid. pp.13-14.

Washington also liens the real property of surviving spouses. If the spouse transfers the property the state has to release the lien, but this rarely occurs.

- See section 3.3.2.1.4 for more best practices regarding tracking community spouses.

Best Practices Literature

According to a 2005 AARP study, 13 states use post-death liens in cases of deferral of recovery. Each state has different policies regarding the use of post-death liens. Twelve states use liens when a sibling remains in the home after having resided there for at least a year before the Medicaid recipient's institutionalization. In 11 states, the agency uses liens when an adult child remains in the home, resided in the home for at least two years before institutionalization, and provided care to delay institutionalization. Fewer states use post-death liens when a surviving spouse resides in the home (6 states), when a minor child resides in the home (4 states), and when a disabled child remains in the home (6 states). Oklahoma used the fewest post-death liens in 2004 (25) and Minnesota used the most (1,500).¹⁰

3.3.1.3. Requests for Notice – “Informational Liens”

Summary

These are sometimes called “Informational Liens,” however Requests for Notice are not legally a lien and that name is therefore a misnomer. When a Medicaid recipient owns real property, the state can file a Request for Notice with the county clerk. This puts legal duty on the title company to notify the state of any transaction related to the property (pre-death) such as transfers of property or the recipient borrowing money against the property. Requests for Notice do not impair the title company; they are informational only.

States Interviews

Oregon is the only state interviewed to date that uses Requests for Notice. This practice has increased the state's awareness of transfers. Prior to this practice the state could not learn of transfers as a matter of routine.

Oregon has statutory authority to file Requests for Notice. Legislation is not necessary to implement this practice, but provides the state with leverage in cases where county clerks are uncooperative.

Washington practices a version of Requests for Notice within their TEFRA process. Washington found that recipients were transferring property to avoid recovery. In response, the state passed legislation allowing the state agency to file with the county auditor a Notice of Transfer for informational purposes. This has allowed Washington to better track cases.

Best Practices Literature

The National Association of State Medicaid Directors lists Requests for Notice as a best practice. The NASMD emphasizes that such notification can be particularly helpful in

¹⁰ Naomi Karp et al. “Medicaid Estate Recovery: A 2004 Survey of State Programs and Practices.” AARP Public Policy Institute. Washington DC, 2005. p.60.

identifying circumstances where a living Medicaid recipient's interest in a property is impacted from financial exploitation by a family member or friend.¹¹

3.3.2. Estate Recovery

The following subsections contain best practices in estate recovery.

3.3.2.1. Estate Research

Summary

Estate research, or asset research, is the set of methods states use to learn of the assets that could potentially be recovered. The efficiency and productivity of an estate recovery program can be greatly impacted by improving estate research processes.

3.3.2.1.1. Questionnaires

Most states use some type of questionnaire for heirs or estate representatives to report real property and assets. The questionnaire covers basic information such as surviving spouse, exemptions, and assets. The estate recovery unit sends the questionnaire to the estate representative when the unit learns of a decedent.

States Interviews

Ohio has an automated system that generates a letter when a case is loaded into the estate recovery file. The letter usually goes to the nursing facility and asks basic information regarding next of kin or the estate representative. The system then generates a second letter to the next of kin or estate representative asking additional information about the case.

Washington has a 60 percent return rate on its questionnaires.

3.3.2.1.2. Other Research

The estate recovery staff also conducts proactive case research to determine a decedent's assets.

States Interviews

In cases where the questionnaire is not returned, Washington's estate recovery staff searches in the local office computer for the decedent's property and assets and matches findings against the counties the decedent lived in and any previous residences. Once it is determined that there is a claim, the information is forwarded to a case manager for action.

¹¹ National Association of State Medicaid Directors. "Estate Recovery Best Practices." #17.
http://www.nasmd.org/issues/docs/III_Estate_Recovery_Best_Practices.pdf

Several states have statutory authority for an affidavit process to collect on personal accounts and bank accounts. Ohio recently secured statutory authority to use an affidavit for bank accounts, basing the language on an Indiana statute.

All states contend with situations where a decedent left real property in another state. States are challenged to learn about these assets because they are subject to the notification requirements in the other state.

Best Practices Research

Especially in cases of small estates, states may choose to collect on a decedent's bank accounts. The 2005 AARP study found that 16 states use direct collections of accounts from banks.¹² The 2007 AARP study found that states that recover funds directly from bank accounts of the decedent use statutory authority based on the "small estates probate" section of the Uniform Probate Code. Under these procedures, Medicaid agencies can use affidavits to collect bank account funds.¹³

3.3.2.1.3. Notice to the State

Summary

Key to a productive estate recovery program is learning in a timely manner that a Medicaid recipient has passed away, or that an estate has been opened in probate. Timely notification is critical because the sooner the state can initiate recovery, the greater the likelihood that the estate's assets will be intact and the state can make a full recovery.

States Interviews

Each state interviewed receives notices about a Medicaid recipient's death or a potential claim situation differently. This is due in part to the varying probate laws in each state and the resulting statutory authority granted to the estate recovery unit. The case management system and interface with the state's MMIS also impact how the state learns of a potential case.

The following estate research practices are conducted by other states:

Washington

Washington has implemented several statewide notification processes through the state's new automated estate recovery case management system.

- The case management system downloads monthly reports based on data provided by field staff.
- The system downloads monthly reports from the superior court system of all probates opened that month.

¹² Naomi Karp et al. "Medicaid Estate Recovery: A 2004 Survey of State Programs and Practices." AARP Public Policy Institute. Washington DC, 2005.

¹³ Erica F. Wood et al. "Protections in Medicaid Estate Recovery: Findings, Promising Practices and Model Notices." AARP Public Policy Institute. Washington DC, 2007.

- The estate recovery unit checks every report item against the MMIS to see if each individual received Medicaid in Washington.
- The estate recovery unit works with the Department of Health to receive a monthly report of all death notices that month. The system automatically checks this report against recipients in the system.

Oregon

Oregon uses a combination of electronic and manual notifications.

- When a Medicaid recipient passes away, the estate recovery unit is notified via the Oregon Access database. This is automated.
- The state receives notice when any estate is opened in probate. A Probate Specialist (dedicated staff position) checks the notices against the case management system (Access database).
- The estate recovery unit receives a monthly report from the Judicial Department regarding estates opened in probate.

Ohio

All estate recoveries in Ohio are done through the Attorney General's office.

- The Ohio Medicaid agency maintains a tracking file of all Medicaid recipients subject to estate recovery when they pass away (all recipients over age 55).
 - At the end of each month, agency staff pulls all files with deceased code accounts from the MMIS and transfers them into an electronic file, which is sent to the Attorney General's office. Files include the recipient's name, social security number, last address, Medicaid identification number, a breakdown of services, and the total paid from Medicaid.
 - Please see section 3.3.7.4 for more information about MMIS interfaces.
- Ohio also works with approximately 25 outside counsel around the state who work on a 20 percent basis for recoveries. These attorneys conduct proactive research on potential cases.

Massachusetts

Massachusetts' estate recovery is conducted through a consulting division at the University of Massachusetts Medical School. The Governor of Massachusetts stipulated that TPL be consolidated for all state agencies (six in all). The Center for Health Care Financing is a unit within Commonwealth Medicine – the consulting arm of the University of Massachusetts Medical School. This unit conducts all TPL activities for all state agencies, including estate recovery and liens.

- When a recipient is 55 or older, the state Medicaid agency staff transfers their file into a sub-file within the MMIS. This file is sent to the estate recovery unit.
- The state receives notice of all probates filed in the state and the estate recovery unit conducts research using the sub-file. Staff searches with the social security number and name to determine if the state has a claim. The process is automated.

Minnesota

Minnesota does not have a comprehensive electronic notification process.

- When an estate is opened in probate, the state receives a Notice to Commissioner. This is not electronic.

- The estate recovery unit receives a monthly report of all probates opened from the Judicial Department (this is a new practice in Minnesota, based on best practices discussion at the recent TPL conference in Denver, Colorado in November 2008). A Probate Specialist (dedicated staff position) manually checks the notices against the case management system (Access database).

According to estate recovery staff in Oregon and Minnesota, receipt of a monthly report from the state's Judicial Department of all probates opened that month is a best practice.

Best Practices Literature

The National Association of State Medicaid Directors (NASMD) recommends that states implement a statewide electronic notification process to alert the estate recovery unit of a Medicaid recipient's death.¹⁴

The National Association of State Medicaid Directors (NASMD) identifies as a best practice that states be notified of all probate notices filed within the state. This practice allows the state to file a claim in probates where estate recovery staff might not know of the death of a former Medicaid recipient.¹⁵

3.3.2.1.4. Tracking Community Spouses

Summary

Efficiently monitoring community spouses is a key to a productive estate recovery program. As long as a decedent has a surviving spouse, claims on an estate cannot be enforced. Knowing when a community spouse passes away alerts the estate recovery unit to initiate a recovery process. The following practices are ways other states track community spouses.

States Interviews

- In Washington the automated case management system includes a cue for field staff to input information regarding a community spouse. The system then sets up a tickler to regularly prompt workers to check for community spouse deaths.
- In Washington the state liens the real property of surviving spouses. If the spouse transfers the property the state has to release the lien, but this rarely occurs. Washington does not consider a lien a recovery action. Washington's lien is filed to protect the state's interest. No recovery actions are pursued in these cases and the liens are valid for 20 years. The surviving spouse is free to sell or transfer his/her property and in those cases the lien is released. This practice has benefited Washington on many occasions. When the spouse dies and our lien is in place, heirs cannot claim that they didn't know of the states claim in the pre-deceased spouse's share in the property.
 - Washington recognizes domestic partners as well as legally married spouses for these liens. The state liens the property of domestic partners when they fall under the legislative definition.

¹⁴ Ibid. #2

¹⁵ Ibid. #11

- See section 3.3.1.2 for more information about post-death liens.
- In Oregon the Access case management system includes a field for information about a community spouse. When the estate recovery unit receives the monthly list of each probate proceeding in a given month, a Probate Specialist will match the list against the case management system for recipients and/or community spouses. The estate recovery unit obtains information about community spouses through field workers and through recipients' death certificates (when an estate is opened in Oregon, the state receives notice, accompanied by a death certificate).
- Oregon uses **contingent claims** when there is a surviving spouse of a decedent. Because the state cannot place a claim on the estate when there is a surviving spouse, they instead file a contingent claim when the estate goes into probate. As long as the surviving spouse is alive the state does not enforce the claim, but if the spouse passes away before the estate is closed the claim will be paid. Oregon does not have specific statutory authority for this.
 - Montana has statutory authority to use contingent claims, but this is not a common practice.
- Ohio has a provision in state statutes for an Affidavit of Fact Relating to Title when a Medicaid recipient dies owning interest in property and there is a surviving spouse. An affidavit is filed stating that there is a Medicaid claim against the property interests and the recipient left a surviving spouse so the claim is not enforceable during his/her lifetime. If the property is transferred or sold during the spouse's lifetime, the title company will see it and notify the state. The state will (likely) be formally notified at a later date. There is no statutory requirement that the state be notified, but the title company will refrain from any business related to the property due to the connected affidavit.
- Because in Minnesota the recoveries are conducted at the county level, the county workers have on-the-ground information about recipients and their spouses. Workers usually know about community spouses and community spouse deaths before reports or notices are received by the state estate recovery unit.

3.3.2.2. Non-Probate/Small Estates

Summary

Small estates, or non-probate estates, have a value threshold and do not include real property in all of the interviewed states. Each state has a different definition of small estate according to statute. Due to the variances in definitions, practices for tracking and recovering on small estates vary greatly. In the interviewed states, small estates do not go through probate. The challenge for some states is in the notification process because many states rely on the notice requirement for probates. A typical obstacle is the state not learning about the small estate in time to file its claim. Many states do not require that the state Medicaid agency receive notice when a small estate is opened.

States Interviews

- In Washington, a small estate is any estate valued under \$100,000 with no real property. All real property has to go through probate. There is an abbreviated process for settling small estates in Washington, but the state addresses this through a Small Estate Affidavit process. When a small estate is opened the state must receive notice. This gives the state timely information about small estates and provides a window for the state to file a claim before the estate is closed.
- In Washington the state is named as a successor to small estates, by statute. This was a recent legislative action. Functionally, this means that when a decedent resided in a nursing facility, the personal property (i.e., leftover funds in bank or other accounts) automatically pass to the state (Department of Social and Health Services). According to WA statute RCW 11.62.005(1), “Personal property’ shall include any tangible personal property, any instrument evidencing a debt, obligation, stock, chose in action, license or ownership, any debt or any other intangible property.” This practice results in approximately \$1 million annually in revenue and requires no effort on the part of the estate recovery unit.
 - Montana is named the successor to defined portions of estates, including personal needs accounts and burial funds. However, Montana is not able to collect on bank accounts or other components of estates in this way. Legislation is under consideration in the 2009 session to grant the State the authority to collect funds directly from banks.
- Minnesota sets the threshold for a small estate very low, at \$20,000 with no real property, which eliminates the majority of problems regarding small estates. All real property has to go through probate. The state is required to receive notice when small estates are opened.
- Ohio does not have a separate definition for small estates so there is no abbreviated process to contend with.

Best Practices Literature

According to the 2005 AARP study, 21 states have an estate value threshold, ranging from \$50 (Wisconsin) to a high of \$75,000 (Alaska). Twenty-two states use a minimum claim threshold, ranging from a low of \$50 (Wisconsin) to a high of \$3,000 (North Carolina). Most states use a cost effectiveness analysis on a case-by-case basis to determine whether to initiate recovery.¹⁶

In cases of small estates when there is no probate process, Medicaid agencies should use Small Estates Affidavits to collect on bank and other accounts, and other funds.

3.3.2.3. Estate Recovery Avoidance

Summary

¹⁶ Naomi Karp et al. “Medicaid Estate Recovery: A 2004 Survey of State Programs and Practices.” AARP Public Policy Institute. Washington DC, 2005.

Best practices literature and interviews with other states reveal that states are constantly challenged to address estate recovery avoidance strategies and trends that are promoted within the elder-law community. One such strategy is for an heir to settle an estate and leave the state without paying a claim or notifying the state in cases of small estates. Other strategies involve finding loopholes in estate recovery legislation.

States Interviews

“Chasing claims” out of state: Most states do not chase claims when a decedent’s heir settles an estate without notifying the state and leaves the state. Oregon, Washington and Minnesota makes a judgment based on cost effectiveness. Minnesota sometimes pursues these cases even when it is not cost effective in order to set a precedent, especially in smaller towns.

Best Practices Literature

The National Association of State Medicaid Directors (NASMD) recommends that states communicate regularly to identify estate recovery avoidance strategies and possible remedies.¹⁷

3.3.3. Estate Recovery Legislation

The following subsections describe best practices in state estate recovery legislation. Many of the best practices in the preceding sections require statutory authority to be effective, which has been noted where applicable. This section concerns overall best practices in estate recovery legislation.

3.3.3.1. Statute of Limitations on Claims

Summary

Estate recovery can be limited by the amount of time, according to state statute, the Medicaid agency has to file a claim against an estate of a former Medicaid recipient. Many states establish the statute of limitations on claims after the *death* of a former Medicaid recipient. This can occasionally present problems for the state because sometimes the estate does not go into probate until the window for filing a claim has closed. In some of these cases, the state does not learn of the recovery opportunity until it is too late because the state is not notified until the estate is opened in probate.

States Interviews

By statute, Oregon has three years from the date probate opens to file a claim. This was a deliberate and recent change to probate law in Oregon because the state determined that too many recoveries were missed due to the previous law giving the state a period of time after death.

¹⁷ National Association of State Medicaid Directors. “Estate Recovery Best Practices.” #10. http://www.nasmd.org/issues/docs/III_Estate_Recovery_Best_Practices.pdf

Minnesota has no statute of limitations on recoveries, but once the state receives notice they have four months to file a claim. If the state does not receive notice their claim remains valid indefinitely.

Minnesota will not give legal satisfaction to a claim unless it is paid in full. If a claim is settled for less than the original claim amount, the state will retain interest indefinitely. If new assets are discovered at a later date the state's claim is then still valid.

In Ohio the state must present their claim within one year of death or 90 days of receiving notice – whichever is later. The clock does not start until the state receives notice, so even if probate is opened years later, the state's claim is still valid.

Montana must file claims within three years of the later of the recipient's death or the closing of the estate, or within four months of the date of the notice to creditors.

Best Practice Literature

No best practices regarding statute of limitations on claims were found in the literature.

3.3.3.2. Priority Creditor Status

Summary

When a state has priority creditor status the Medicaid agency's claim on a deceased Medicaid recipient's estate will be paid in an established order, regardless of when the state filed its claim. This gives states a modicum of breathing room when claims are not filed immediately.

States Interviews

Oregon, Minnesota, Ohio and Arizona file claims with priority creditor status, allowing them to collect in an established order along with other priority creditors regardless of when the claim was filed. This requires statutory authority.

In Washington, the Medicaid agency is not named specifically as a priority creditor, however the state claims under the statutory language: "expenses of the last sickness in a reasonable amount" (third in line) or "taxes, debts, or dues owing to the state" (sixth in line).

Best Practices Literature

According to the National Association of State Medicaid Directors (NASMD), this is a best practice for legislation. NASMD states, "there is no reason why general creditors should be in the same position as the state when the recovery of public monies is involved."¹⁸

3.3.3.3. Notice to Creditors

¹⁸ National Association of State Medicaid Directors. "Estate Recovery Best Practices." #10. http://www.nasmd.org/issues/docs/III_Estate_Recovery_Best_Practices.pdf

Summary

One obstacle in the way of effective estate recovery is when estates are opened in probate and creditors (of which one might be the state) are not notified, placing the burden on the state to determine if they have a claim on the estate. Securing statutory authority for Notice to Creditors requires estate attorneys to check if Medicaid is a creditor when the estate is opened.

States Interviews

In Washington and Ohio, when an estate is opened the state must receive notice, by statute, to check if Medicaid is a creditor.

3.3.3.4. State as Successor to Estate

Summary

Functionally, this means that when a decedent resided in a nursing facility, the personal property (i.e., leftover funds in bank or other accounts) will automatically pass to the state upon death, requiring little to no action on the part of the state Medicaid agency.

States Interviews

In Washington the state is named as a successor to small estates, by statute. This was a recent legislative action. According to Washington statute RCW 11.62.005(1), “Personal property’ shall include any tangible personal property, any instrument evidencing a debt, obligation, stock, chose in action, license or ownership, any debt or any other intangible property.” This practice results in approximately \$1 million annually in revenue and requires no effort on the part of the estate recovery unit.

- As mentioned previously, Montana is named the successor to defined portions of estates. Montana does not have authority to be the successor to a small estate in its entirety.

Statutory authority must be secured to establish the state as a successor to an estate.

3.3.4. Public Relations/Community Education

Summary

Government recoupment of funds makes Medicaid long-term care different from most public benefit programs. States need to educate beneficiaries and families about this fact by providing clear and comprehensive public information. Educating the public, particularly Medicaid applicants, about estate recovery has two purposes: 1) the more information recipients and their families have about estate recovery, the better understanding recipients have and the fewer complaints the state receives; and 2) recipients and their families are more likely to provide the appropriate information for smoother recoveries. Some problems and complaints are to be expected, but disseminating accurate information about estate recovery regularly and comprehensively should reduce keep misinformation to a minimum and protect surviving spouses and other family members eligible for waivers or exemptions.

Community education includes both broad education about estate recovery and education in specific recovery cases. Medicaid applicants should be informed about estate recovery and recipients' options at the time of application. When the state sends a notice of a claim, detailed information should accompany the notice.

States Interviews

Most of the states interviewed do rigorous community education about estate recovery.

- All states provide a standard set of information with claim notices, including details about the claim, information about hardship waivers, and information about exemptions and requests for hearings.
- Oregon, Washington, and Minnesota distribute a brochure or pamphlet to recipients about estate recovery. Oregon's brochure is translated into four languages.
- Washington is required by statute to inform applicants about estate recovery and distribute an informational brochure.
- Iowa and Arizona have a website dedicated to educating recipients and the public about estate recovery.
- All states interviewed encourage field workers to educate Medicaid applicants about estate recovery at the time of application.
- Minnesota and Massachusetts require that Medicaid applicants sign to acknowledge that they received information about estate recovery.
- Washington refers all applicants to a legal aid service if they need legal assistance or advice regarding estate recovery.
- Massachusetts attributes the majority of complaints received regarding estate recovery to inadequate education of a recipient's family.
- Ohio, Oregon and Washington encourage field staff to provide the phone number of the state estate recovery unit to recipients.
- Many states also target outreach and training to the broader legal community and other agencies interfacing with the elderly. The estate recovery supervisor in Ohio speaks several times each year at bar association conferences, probate seminars, and conferences. He also speaks to the Department of Aging's Area Agencies on Aging (AAAs).

Best Practices Literature

Some states provide information about estate recovery to Medicaid recipients at the time of application as well as at other times. Fourteen states give notice at re-determination of eligibility, and 13 at admission to a certified facility.¹⁹

Early notice of estate recovery is a best practice. The 2007 AARP study has the following recommendations for best practices in community education:

- Provide information about estate recovery as early as possible in the application process.
- Provide information at multiple points throughout a recipient's tenure, such as re-determination of eligibility or admission to a certified facility.
- Make estate recovery notices more visible on the Medicaid application. Oregon did this by moving the information to just above the recipient signature block.

¹⁹ Naomi Karp et al. "Medicaid Estate Recovery: A 2004 Survey of State Programs and Practices." AARP Public Policy Institute. Washington DC, 2005.

- Consider developing and using user-friendly brochures, websites, and translate information into appropriate languages for the community. Distribute brochures frequently and widely, and by varied means.
- When creating educational materials consider the level of detail the intended recipients are able to absorb. Ensure that content is clear and readable and contains all pertinent information.
- Provide basic training of eligibility staff.
 - See section 3.3.5.3 for more information about staff training.
- Develop a system for field workers to document that educational materials were received and estate recovery was discussed.
- Publicize a phone number for questions and concerns.
- Educate the legal community by speaking at legal conventions and conferences.²⁰

3.3.5. Program Staffing

Summary

A clear staffing model and documented procedures ensure that program knowledge and expertise rests with the program, not solely with individuals. The estate recovery expert at HMS emphasizes that estate recovery is a specialized field, and all staff whether they are attorneys or not, should be well-versed in probate law. Successful estate recovery programs should have dedicated staff that do not share time with other program areas.

Some states choose to outsource their estate recovery services.

HMS is one vendor of estate recovery services, although their main service is TPL. HMS currently does estate recovery for 10 states. HMS has a lead for each state for which they conduct estate recovery services. Several additional staff are assigned to each state. For example, nine HMS staff are assigned to Iowa (including the lead), and four are assigned to Arizona. Some HMS staff do estate recovery work for more than one state. HMS also has other internal estate recovery resources, including estate recovery expert Ben Chatman (Iowa) and estate recovery staff for other states.

At least one state, Massachusetts, outsources their estate recovery program to a division of the University of Massachusetts. Estate recovery is staffed by the Center for Health Care Financing (CHCF), a unit within Commonwealth Medicine, a consulting division of the University of Massachusetts Medical School. The purpose of this arrangement is that the Governor of Massachusetts determined that all Third Party Liability (TPL) activities be consolidated and processed centrally for all state agencies (6 in all). CHCF staff communicates frequently with the state's Medicaid agency staff, and uses the legal council of the Medicaid agency when needed.

States Interviews

²⁰ Erica F. Wood et al. "Protections in Medicaid Estate Recovery: Findings, Promising Practices and Model Notices." AARP Public Policy Institute. Washington DC, 2007. Also see National Association of State Medicaid Directors. "Estate Recovery Best Practices." #14. URL: http://www.nasmd.org/issues/docs/III_Estate_Recovery_Best_Practices.pdf

States interviewed that conduct estate recovery in-house feel that doing estate recovery themselves (i.e., not outsourcing the activities) is a best practice because it is more cost effective and the control rests with the state agency.

Although in most states, estate recovery staff are not attorneys, in Oregon, six of the 12 estate recovery staff members are attorneys or are licensed to practice law.

Washington's estate recovery staff includes a paralegal.

Estate recovery staff in Massachusetts are all professional attorneys or paralegals with backgrounds in real estate law, probate law, and/or Medicaid and estate planning.²¹

HMS Interview

Best Practice Literature

- In Massachusetts the estate recovery unit is staffed by the Center for Health Care Financing (CHCF), a unit within Commonwealth Medicine, a consulting division of the University of Massachusetts Medical School. Estate recovery staff are attorneys or paralegals with backgrounds in real estate law, probate law, and/or Medicaid and estate planning. Staff regularly attend professional seminars and take courses to update their knowledge of current real estate and probate law.²²

3.3.5.1. Probate Specialist

States Interviews

The process of collecting notices for estates opened in probate and matching this list against the case management system or MMIS can be time consuming, slowing down the estate recovery process. To address this issue, several states have established a Probate Specialist position in their estate recovery unit. A Probate Specialist is a dedicated FTE who compares the list of opened probates against the case management system or database and/or the MMIS. Oregon and Washington have a Probate Specialist position.

Best Practice Literature

The National Association of State Medicaid Directors (NASMD) recommends using a Probate Specialist to match the names and social security numbers associated with new probates with the database of deceased Medicaid recipients and their surviving spouses.²³

²¹ For more information on Massachusetts' model, see: US Department of Health and Human Services. Policy Brief: "Medicaid Liens and Estate Recovery in Massachusetts." 2005.

²² US Department of Health and Human Services. Policy Brief: "Medicaid Liens and Estate Recovery in Massachusetts." 2005.

²³ National Association of State Medicaid Directors. "Estate Recovery Best Practices." #6. http://www.nasmd.org/issues/docs/III_Estate_Recovery_Best_Practices.pdf

3.3.5.2. Staff Attorney

Summary

Some states experience challenges when the state agency's legal council is not dedicated to estate recovery activities. One possible remedy for this is to employ a dedicated staff attorney within the estate recovery unit.

States Interviews

Other states interviewed for this report do not see a need for a dedicated staff attorney.

- Although Oregon's estate recovery unit staff includes several attorneys, they do not feel that a dedicated staff attorney is a best practice.
- Washington indicates that because their estate recovery staff are "as knowledgeable about probate law as most probate attorneys," they have no need for a staff attorney.
- Ohio does all recoveries through the Attorney General's office. The AG office also uses independent council throughout the state. These attorneys (approximately 25) work on a 20% of recovery basis.
- Massachusetts (note that Massachusetts' estate recovery is centralized within a division of the University of Massachusetts) works with the in-house legal department of the state Medicaid agency when legal council is needed.

Best Practice Literature

No best practices were found in the literature regarding staff attorneys.

3.3.5.3. Staff Training Procedures

Summary

Training is a function of estate recovery staff. In-person training of field staff ensures that the workers who are interfacing with recipients talk to recipients accurately about estate recovery and collect the appropriate information about recipients' property. The support of field workers for the estate recovery program is critical because they provide the information upon which each case is built.

States Interviews

- In Oregon, Washington and Minnesota, state estate recovery staff goes out to field offices to conduct training in person.
- The estate recovery supervisor in Minnesota spends approximately 25 days per year training field staff in estate recovery issues.
- In most states the estate recovery staff participates periodically in regular teleconferences or video training for field staff when the subject of estate recovery is addressed.

Best Practice Literature

The National Association of State Medicaid Directors encourages regular, on-site training for field workers, noting "there is no adequate substitute for hands-on training in the field to explain the process and answer questions."²⁴

²⁴ National Association of State Medicaid Directors. "Estate Recovery Best Practices." #6.
http://www.nasmd.org/issues/docs/III_Estate_Recovery_Best_Practices.pdf

3.3.6. Performance Measures

Summary

Performance measurement is systematic collection of data that shows how well the estate recovery program is meeting its goals. A solid performance measurement system helps states track the efficiency and productivity of their estate recovery program.

HMS Interview

The HMS estate recovery expert recommends two basic performance measures:

- Number of complaints received annually.
 - Please see section 3.3.4 for more information on complaints and best practices regarding public education.
- Annual net revenue from recoveries.

States Interviews

Most states agree that measuring the performance of estate recovery programs is difficult because there are many factors outside of the program's control. Oregon does not have performance measures for this reason.

Some examples of performance measures collected in Minnesota, Iowa and Arizona include:

- Net revenue.
- Number of complaints received (a high number of complaints indicates problems with outreach and public relations).
- Number of recoveries.
- Events that lead the estate recovery program not to pursue recoveries.
- Timeframes or life cycles of recoveries.
- Performance of Attorneys General.
- Contact with attorneys – overall by all workers.
- Assignments and balances by case manager.
- Balances by business line.
- Number of forced probates (state opening probate).
- Information about administrative hearings.
- Property value averages by county.
- Averages by probate attorney.

Best Practice Literature

While most states have a computerized system (i.e., Access database) allowing them to collect basic data on estate recovery, many track only the number of estates against which recovery was completed. The specific data elements collected vary considerably from state to state:

- Number of exemptions and deferrals (17 states).
- Number of hardship waivers requested (21).
- Number of hardship waiver granted (24).
- Number of recoveries contested (12).
- Number of recovery settlements (18).

- Sources of property (real versus personal) from which recovery was made (13).
- Number of pre-death liens (9).²⁵

MITA, Operations Management recommends the following performance measures:

- Time to complete the process.
- Accuracy with which rules are applied.
- Consistency with which rules are applied.
- Error rate.
- Total dollar amount received through estate recoveries.²⁶

3.3.7. Systems

Summary

Every estate recovery unit should have a computerized case management system for tracking and managing cases. Some interviewees believe that a state's estate recovery program is only as good as its case management system. Automation, including web-based systems and document imaging, allows programs to leverage resources across agencies or units within the state Medicaid agency. Automation allows for consistent, measurable application of processes and procedures across cases.

States vary in the type and quality of their case management systems. State estate recovery staff and HMS staff interviewed for this report agree that regardless of the case management system used, it should not be a component of the MMIS, and an MMIS vendor should not be used to develop an estate recovery system. The estate recovery case management system must be flexible and able to respond to the unique needs of the program. One interviewee pointed out that if the estate recovery system is part of a larger MMIS, estate recovery will wait in a priority queue along with everyone else for changes to the system. Because estate recovery is constantly changing according to statutory changes, the lack of flexibility could create a backlog.

The following subsections provide detail regarding the various estate recovery case management solutions in use by states.

3.3.7.1. Web-Based Solutions

Summary

Web-based case management systems are reportedly much faster and more flexible than computer-based systems. Web-based systems reduce manual work and thus cut down on human error. The two states interviewed that are using web-based systems indicated that

²⁵ Erica F. Wood et al. "Protections in Medicaid Estate Recovery: Findings, Promising Practices and Model Notices." AARP Public Policy Institute. Washington DC, 2007.

²⁶ Medicaid Information Technology Architecture (MITA). Business Process Template, Operations Management, Business Area: Manage Estate Recovery.

they are able to build in features such as federal rules regarding allowable claims, timeline cues for specific cases, and automatically generated correspondence.

States Interviews: Washington

Washington recently developed an automated estate recovery case management system. The system was developed in-house. Some details about the system include:

- Web-based and flexible to the needs of the program.
- Interfaces with the MMIS at key points.
- Covers the entire estate recovery process – from identifying cases, through management of the case and collections.
- Interfaces with the accounting system, but is not itself an accounting system.

How it works:

- Field unit staff enters information about Medicaid recipients via codes into the system.
- The state estate recovery unit receives monthly downloads of:
 - Case information entered by field workers that month.
 - Superior Court information on probates opened that month.
- The estate recovery unit is currently working with Department of Health to also receive all deaths in Washington that month.
- The system includes cues for staff to follow up on community spouses, liens, or claims within mandated timelines.

Washington's estate recovery staff will provide walk-through of the system to interested parties.

States Interviews: Massachusetts

Massachusetts currently uses a web-based case management system developed initially by a vendor and the development was ultimately taken over by in-house developers. A business decision was recently made to consolidate all TPL case management efforts into one system for all state agencies (across six program areas, of which Medicaid estate recovery is one). The development of that system was outsourced and is underway. Some features of Massachusetts' system include:

- All correspondence is automated. This includes letters, questionnaires and other communication with recipients, beneficiaries, attorneys or estate representatives.
- The reporting function is automated.
- Claims are automatically calculated. The system also includes the federal rules and will automatically categorize each claim according to the rules. The system automatically excludes anything that is not recoverable, significantly reducing the effort required to determine if the state has a claim.

3.3.7.2. Access Databases

Summary

Oregon and Minnesota use Access databases for case management. Both states agree that their case management systems are out of date, but because they are developed by estate

recovery staff, they usually meet the needs of the program. However, the lack of automation can slow the recovery process.

3.3.7.3. HMS Maestro System

Summary

HMS uses a case management system called “Maestro.” It is a proprietary case tracking system. “Maestro” functions like an Access database, but in addition to entering information, the system has other functionality, including:

- Staff can build timelines and the system will provide cues for staff to follow up on things like notices, community spouses, etc.
- The system can assign workflows to different caseworkers.
- The system images documents so staff can pull up an estate case and look at images of correspondence received, and letters and documents sent.
- The system incorporates ticklers or reminders of the “to dos” for a case.

Maestro does not contain anything that cannot be accomplished in Access, but the structure is established and proven effective in managing cases.

3.3.7.4. Sharing Information with the MMIS

Summary

Washington’s estate recovery case management system has appropriate links with the state’s MMIS. States using Access databases or the HMS Maestro system do not interface with the MMIS. All states have the ability to query the MMIS or a sub file of the MMIS.

In Washington:

- Estate recovery staff enter Notice to Creditors information into the estate recovery system and it automatically links with MMIS and sends back possible matches.
- With information about a deceased person, probate, Notice to Creditors, etc., a worker can inquire through the estate recovery system to see if the recipient ever received services in Washington. Workers do this as soon as they learn that there are assets.
- Estate recovery staff checks every one of the 2000 cases they receive each month in the MMIS. This takes seconds because the estate recovery system is linked with the MMIS.

In Ohio:

- The MMIS has a 55 plus code, which automatically transfers those cases into an estate recovery file that is regularly sent to the Attorney General’s Office (where all recoveries are conducted). The cases are then loaded into the Attorney General’s case management system (set up like any collections system). The MMIS also has a death discharge code that automatically transfers those cases into an estate recovery file that is sent to the Attorney General’s office and loaded into the case management system.

SECTION 4. Gap Analysis

4.1. Introduction

This section of the report focuses on the gaps in Montana's current lien and estate recovery processes. A gap is the difference between how things are done now and how they can be done in the future to make lien and estate recovery processes more effective and efficient. The identified gaps will pave the way between the as-is and the to-be processes.

Many of the gaps come from best practices in other states, which could be replicated in the State. Other gaps are specific to Montana's systems. The Department of Public Health and Human Services is in an unprecedented period of system change, building and implementing a large number of new systems, including its Medicaid eligibility, Medicaid claims, accounting, death registry, property, and court systems. The following sections define each gap and provide recommendations for improvement.

4.2. Communicating with Medicaid Applicants, Recipients, and Their Families

Although Montana's communication with Medicaid applicants and recipients is similar to other states, there is room for improvement. Montana currently distributes a brochure on liens and estate recovery, and also has information on a web site. Communication with the Medicaid recipient is generally limited to application and lien filing. Applicants must sign an acknowledgement of the estate recovery program, and nursing home applicants should complete the 121 Form regarding real property liens. Nursing home recipients with real property receive a notice of intent to file a lien and, if applicable, a notice of the medical assistance lien. Communication with families typically occurs after the recipient dies, using the estate recovery questionnaire as the first method of contact. Subsequent communication occurs as needed.

4.2.1. Recommendations for Improvement

Make the Web Site Easier to Navigate and More Informational for Applicants, Recipients, and Families

The web site has a variety of fact sheets or brochures on long term care issues, but only one brochure on liens and estate recovery. In general, web sites are a mechanism to communicate more detailed information, which can be more easily and cheaply updated than printed materials. There is no best way to use a website, but in general, the website should:

- Be easy to navigate. Currently it is difficult to locate the lien and estate recovery brochure.
- Ensure information is easy to read and understand. Text size should be large enough for visually impaired individuals to read, and readers should be able to access the

information in Spanish. Simple language should be used that the general public can understand.

- Include information directed at families or answering questions about how liens and estate recovery impacts families.
- Include contact information to allow people to email or call with questions.

Update Information in the Brochure/Web Site

The information in the brochure will soon be out-of-date. The Department will need to update the information to reflect policy changes, including:

- Medicare Buy-In programs will no longer be included in the recovery process.
- A list of all assets within an estate that may be collected, beyond PNAs, burial accounts, and savings/checking accounts.
- An explanation of how the Department may collect money from savings and checking accounts directly from banks, if the supporting legislation passes.

Ensure the MSU Website Contains Accurate Information

Montana State University Extension Services created and distributes two brochures that include Medicaid lien and estate recovery information:

1. “Using a Homestead Declaration to Protect Your Home from Creditors”
2. “Designating Beneficiaries through Contractual Relationships”

The TPL Unit should review these brochures to make sure they approve the distributed information. The TPL Unit should also set the expectation that MSU Extension Services work with the TPL Unit before creating any additional outreach materials.

Consider Additional Communication with Recipients and Families

Montana should look at public communication holistically, and consider how people receive the information and how well recipients and their families understand lien and estate recovery. Montana should consider the following options:

- Provide information to recipients at regular intervals in addition to application.
- Require applicants to acknowledge their receipt and understanding of the material orally, as a part of the intake interview, or by signing a form.
- Include information for families in the lien and estate recovery communication materials.
- Examine questionnaires from the perspective of decedent families’ communication needs as the questionnaires are rewritten in the future.

4.3. Liens

Montana uses TEFRA liens to establish Medicaid’s right to recover monies spent for an individual’s nursing facility or other institutional care from their home or real property. Liens are especially important in Montana since the State is not a preferred creditor. They allow Medicaid to establish its right as a future claimant against the estate well in advance of the estate recovery process, where the State has to get in line with all other creditors.

Recommendations for improvement follow each lien subtopic below. Generally, Montana’s current lien processes can be improved to help the State better identify all nursing facility service recipients, their real property, and the expiration of intents to return home. Montana

could also consider using post-death liens and Requests for Notice as additional lien tools. The process could also be improved by streamlining payment to county clerk and recorders.

4.3.1. Lien Research

The TPL Unit only learns of nursing facility applicants' real property through the paper 121 Forms sent from the county OPA offices. Eligibility workers must remember to complete and send in the 121 Forms, which occurs inconsistently. When 121 Forms are completed, they are mailed to the TPL Unit as a paper form, and the property information is manually researched, logged into a spreadsheet, and entered into TortTracker. This process is very manual and inefficient with a lot of room for improvement.

4.3.1.1. Recommendations for Improvement

Obtain Nursing Facility Service Recipient Information from MMIS

The TPL Unit should ensure it has real property information for all nursing facility service recipients. Because the current process is inconsistently implemented, there could be many nursing facility residents for whom the TPL Unit does not have 121 Forms. The Department can query the MMIS for this information and match the results against information in TortTracker. The TPL Unit could make cross checking 121 Forms and nursing facility resident information a regular part of its quality assurance process. The TPL Unit must coordinate with OPA offices to complete the missing 121 Forms. This exercise can be used as a training and feedback tool for eligibility workers.

Capitalize on CHIMES-Medicaid and Associated BPR in OPA Offices

CHIMES-Medicaid will improve the current process by directing eligibility workers' workflow to the 121 Form when individuals are applying for or transitioning into nursing facility services. The form will be electronic and could eventually interface with the lien and estate recovery system. In the interim, the forms will be sent via fax or electronically to the TPL Unit. The TPL Unit should expect to receive an increased number of 121 Forms once CHIMES-Medicaid is implemented.

Exchange Lien Research Information with CHIMES-Medicaid via Web Services

A lot of the current process relies on paper-based information exchange and manually querying and entering information. The following information should be electronically exchanged between CHIMES-Medicaid and the new lien and estate recovery system:

- Information on nursing facility applicants at time of application.
- 121 Forms and associated property information for nursing home applicants.
- The Medicaid status and status updates of applicants (pend, deny, approve).
- Additional property information found by the TPL Unit.

Use Cadastral System Improvements to Streamline Property Research

The Information Systems Bureau is aggregating property information from the Cadastral system to make it easier to search. This project will be implemented shortly, and once in

place, the TPL Unit will use this information to more easily locate additional, unreported real property.

4.3.2. Intent to Return Home

Nursing facility recipients are allowed to file an intent to return home when they enter the facility, meaning their institutionalization may not be permanent. An intent to return home remains valid for six months, after which the institutionalization is considered permanent and the State may file a lien. Unfortunately, Montana misses out on a lot of these lien filing opportunities for a variety of reasons, including:

- Many individuals die within this six-month period and a lien cannot be filed. The case becomes an estate recovery claim instead.
- Real property may be transferred to community spouses or other exempt populations during the intent to return home, and the State cannot file a lien because the transfer disassociates the recipient from the property. Transferred real property also is not considered in estate recovery. This issue is discussed in more detail in section 4.5.
- The TPL Unit may miss some lien filing opportunities because TortTracker is not a case management system, and reviewing cases is a manual, error-prone process.

4.3.2.1. Recommendations for Improvement

Make Medicaid a Priority Creditor

Liens would be less important if the State had priority creditor status. The state's right to collect its debt against a decedent's estate would be protected by this statutory authority. This recommendation is repeated in other areas of the report, because it has implications on a number of process gaps.

Implement a Case Management System

A case management system will allow the TPL Unit to dynamically track cases. Changes in intent to return home status within CHIMES-Medicaid could interface directly with the system. Alerts, ticklers, and/or work queues could help better manage workloads and ensure cases do not slip through the cracks. This recommendation is also repeated throughout the report, and could be considered one of its central themes.

Utilize Contingent Liens

The TPL Unit could file a lien that would be contingent on the recipient being permanently institutionalized. This contingent lien could also protect Medicaid's interest in case the recipient dies within the six-month intent to return home period. The contingent lien could additionally protect the State's interest in property after the recipient's death and the community spouse's, exempt child's, or exempt sibling's death if they occur within three years of the decedent's death. This tool would require a legislative change.

Utilize Requests for Notice or Affidavits of Fact Relating to Title as a Tracking Mechanism

Requests for Notice or Affidavits of Fact Relating to Title would ensure that Medicaid knows about all sales or transfers of real property during the intent to return home

timeframe. The case management system should accurately track all property associated with recipients, and this tool would provide the property information.

4.3.3. Using Only TEFRA Liens

Montana only uses pre-death or TEFRA liens because recipients are statutorily required to receive notice of the State's intent to file a lien when they are alive. Montana could consider using additional lien or lien-like tools to protect Medicaid's interest in recipients'/decedents' real property.

4.3.3.1. Recommendations for Improvement

Utilize Post-Death Liens

Montana could consider using post-death liens in situations where community spouses, minor/disabled children, siblings, and adult child caregivers remain in the home. Post death liens could also be used for any Medicaid recipient whose estate goes to probate. This would require a legislative change and changes to the notice of intent to file a lien.

Use Requests for Notice or Affidavits of Fact Relating to Title as a Tracking Mechanism

The State could require title companies to notify them of any property transactions for institutionalized Medicaid recipients. This tool would probably be more comprehensive in its tracking of property transfers than the TEFRA liens, but it does not establish the State's right to collect its debt against the property. Montana would need status as a priority creditor to use Requests for Notice in lieu of liens.

In addition to potentially replacing TEFRA liens, Requests for Notice would allow the TPL Unit to accurately track property associated with recipients having intents to return home, as well as property resided in by community spouses, exempt children, or exempt siblings.

Montana will need to pass legislation to ensure consistent use of this tool.

4.3.4. Clerk and Recorder Payment

If the TPL Unit cannot find the legal property description in the Cadastral system, they have to contact county clerk and recorders for the information. Some counties assess a one or two dollar charge for this process. The TPL Unit also has to pay the clerk and recorders for every lien filed and released. The lien coordinator has access to First Checks to pay the counties, but the cost of First Checks is significant, sometimes higher than the amount paid to the counties.

4.3.4.1. Recommendations for Improvement

Work with Counties to Create Different Payment System

The TPL Unit could have accounts they pay on a monthly basis for each county rather than handling each transaction individually. These accounts could exist and be paid through the shared fiscal services layer of the Business and Financial Services Division.

4.4. Estate Recovery

Montana recovers from estates both through the probate court process and out of probate, directly from accounts and trusts that are settled out of court. Montana does not have priority creditor status, so the State is treated as a general creditor. This creditor status adversely impacts the amount the State can recover and the notifications the State receives regarding Medicaid decedents' estates.

Specific recommendations follow each subtopic below. Generally, Montana's current estate recovery processes can be improved using different methods to identify deaths, probate cases, decedent accounts, and small estates.

4.4.1. Identifying Medicaid Recipients' Deaths

The TPL Unit finds out about Medicaid recipients' deaths from numerous resources, most of which require extensive manual intervention. The sources currently used for death information are:

- TEAMS deceased recipient report – This is a weekly report requiring the estate coordinator to manually look up each recipient's age and nursing facility status. The sources for information in this report are nursing facilities reporting deaths to the OPA office, which then are entered into TEAMS and deaths entered by the estate coordinator found through other sources. Nursing facilities often report deaths late. The estate coordinator often has to find dates of death and enter them into TEAMS because the system allows eligibility workers to classify an individual as dead without an associated date.
- Obituary clippings – These clippings are sent from a service, and they have to be manually searched to identify Medicaid recipients.
- Part D File from CMS/MMA – The Department receives this report monthly. It has to be manually processed similar to the date of death report.
- Probate information resources – The estate coordinator discovers recipients' deaths through probate clippings and probate notices. These are discussed in more detail in the probate identification subsection below.

4.4.1.1. Recommendations for Improvement

Implement Death Information Database

The Information Systems Bureau is designing a database that will house death information from Vital Statistics and from CMS/MMA. These two information sources will identify the majority of in-state and out-of-state deaths. The information currently is received in monthly batches. The TPL Unit may want to increase this frequency to daily so it does not

miss out on small estate recovery opportunities because of delayed death information. The TPL Unit should also consider having this information shared via web services with the new lien and estate recovery system.

Utilize CHIMES-Medicaid for More Accurate Death Information

CHIMES-Medicaid will receive death information from its interface with the Social Security Administration's Beneficiary and Earnings Data Exchange's (BENDEX) information and from Medicare Buy-In information. This in combination with the new death information database will cover 99 percent of Medicaid recipients' deaths. Vital Statistics will eventually share death information directly with CHIMES-Medicaid, making the death database moot because all of the data sources will be contained within CHIMES-Medicaid.

CHIMES-Medicaid will share its death information with the TPL Unit through the deceased recipient report. The deceased recipient report in CHIMES-Medicaid is better than the current TEAMS report, in that it will include asset information and have more accurate death information. The new lien and estate recovery case management system should receive the information electronically from CHIMES-Medicaid on a daily basis. This could be a phase two enhancement to CHIMES-Medicaid.

Receive Death Discharge Codes from the MMIS

Medicaid recipients who died in a hospital or nursing facility can be identified in the MMIS through their discharge codes. Sometimes these institutions submit their claims for payment as much as six months after providing services, meaning this death information may be out of date. That said, the TPL Unit may still obtain some value from identifying recipient deaths through this code. This could be a valuable source of death information until the death database and CHIMES-Medicaid are implemented. In the longer term, this information could be a check against the accuracy of the other death information resources.

Discontinue Using the Obituary Clipping Service

The obituary clipping information will be captured in the death information database and in CHIMES-Medicaid. The Department should cease using the service once it is clear that 99 percent of all deaths are captured through these other sources. This should create large time savings for the TPL Unit.

4.4.2. Using the Questionnaire in Estate Research

Montana uses an estate recovery questionnaire as its sole tool to identify accounts for recovery outside of the probate process and as one of three methods to identify probate cases. The questionnaire form, process, and system all create deficiencies in the research and recovery of estate assets. The problems identified include:

- The questionnaire process does not track responses, allowing estates to be overlooked when questionnaires are not returned. The TPL Unit does not send follow up letters in these cases.
- The questionnaire form does not prompt estate representatives for complete information on assets. Only burial accounts, personal needs accounts, and

checking/savings account information is included on the form. Critical assets, such as retirement accounts, are overlooked.

- Asset information entered by decedents' families is not validated against information in TEAMS. TEAMS has additional asset beyond the three accounts listed in the questionnaire, and could serve as a check on the accuracy of the information provided for the three accounts.
- Information received via the questionnaire is manually entered from the questionnaire into TortTracker after it is returned. Using separate databases to track the number of questionnaires sent and the remainder of the estate recovery case creates additional work.

4.4.2.1. Recommendations for Improvement

Implement a Holistic Case Management System that Tracks Questionnaire Metrics

The questionnaire process should not be segregated from the rest of the estate recovery process with a separate database. The system should automatically create questionnaires when decedent or probate information matches with MMIS claim data to indicate that a recovery should be made. The TPL Unit should be able to easily track all aspects of the questionnaire process. The case management system should track aging, unreturned questionnaires and prompt follow up from the estate coordinator. The system could also automate form and letter creation.

In the short term, the estate coordinator should send reminder letters when questionnaires are not returned. Metrics on the number sent and returned should be tracked within the current system.

Obtain Heir Information from Nursing Facilities

The TPL Unit could contact nursing facilities to obtain information on heirs or next of kin. This information could be compared with the information in the case management system to ensure questionnaires are being sent to the correct people. Directing the questionnaires to the right people/addresses could create higher return rates.

Revise the Questionnaire

The TPL Unit should consider revising the questionnaire to include more asset types. This expanded questionnaire may reveal additional, unknown assets. The questionnaire should also be easy to understand and be accompanied by a full fact sheet, so families without legal assistance are well informed.

Use TEAMS and CHIMES-Medicaid as a Source of Asset Information

The estate coordinator should begin verifying asset information in TEAMS as soon as possible. The State could start collecting funds from other asset sources by implementing this change.

Once CHIMES-Medicaid is implemented, even more asset sources will be known. CHIMES-Medicaid will use a contractor called Accurate to identify applicants' assets, further

improving the level of information available from the eligibility system. All asset information will be included in the deceased recipient report.

Use DIFSLA Report to Identify Interest Earning Assets

The TPL Unit should use the DIFSLA report to identify unreported assets, particularly interest-earning assets.

4.4.3. Additional Sources of Probate Information

In addition to the questionnaires, the estate coordinator identifies probate cases through either 1) probate notices sent to the State from the courts or 2) probate clippings sent by a clipping service. Problems in these information sources include:

- Both sources have time delays. The clipping service in particular has been behind in certain geographic areas. The probate notices are often about two months delayed. The time delay impacts the status or order of Medicaid's claim on the estate, since Medicaid is not a priority creditor.
- Both processes are very manual. The estate coordinator receives paper copies of the clippings or notices and has to perform queries to determine if the individual is a Medicaid recipient.

4.4.3.1. Recommendations for Improvement

Require Estate Representatives to Notify Medicaid of Probate Cases Using Notice to Creditors

Estate representatives do not currently have an obligation to notify the State of a Medicaid decedent's estate going into probate. A notice to Creditors would require estate attorneys to check whether Montana is a creditor when opening an estate. If Montana were to require this, the State would have a more direct and timely way of identifying probate cases. This will require a legislative change.

Improve Communication with Probate Courts

Medicaid should work to improve its communication with probate courts regarding new and ongoing cases. In the current environment, probate court judges are closing cases in which Medicaid has an open, unsettled claim, without notifying the State. A case management system may alleviate some of this issue by prompting action on aging cases.

Interface with the FullCourt System to Receive Timely Probate Case Information

The Information Systems Bureau is creating an interface between the Court Administration's FullCourt system and a Department system, which will most likely be the lien and estate recovery case management system. This interface is intended to address the lack of information from probate courts. The TPL Unit will have access to statewide probate court information, which will allow it to see the status of its cases and learn about new cases. The interface will not tackle the need for proactive two-way communication with the court; it is a one-way information retrieval tool.

Discontinue Using the Probate Clipping Service

The Department should cease using the probate clipping service once it is clear that all probate information is received via the FullCourt interface. This should create large time savings for the TPL Unit.

4.4.4. Small Estates

In 2004, Montana raised the cap on small estates from \$10,000 to \$50,000. Unlike many other states, Montana's small estate process goes through probate courts and includes real property. The small estate process differs from the normal probate process in that it can be as short as 30 days and probate can close using an affidavit process. This abbreviated process makes it difficult for the State to identify small claims in time to secure its interest as a creditor. The TPL Unit is not finding out about these cases quickly enough to take action.

Montana small estate law is contradictory. Estate recovery law requires that Medicaid is notified, and probate law does not. The estate coordinator only finds these cases through probate notices, which are usually two months behind. Often probate is closed by the time the TPL Unit learns of it.

4.4.4.1. Recommendations for Improvement

Establish Medicaid as a Priority Creditor

Medicaid would find out about these cases if the State were a priority creditor. Montana law contains a list of priority creditors, but Medicaid is not on this list. This recommendation would make the notice to creditors or small estate affidavit less important, since these recommendations pertain to Medicaid as a general creditor.

Make State Law Consistently Require Notification of Small Estates

State statute should consistently require Medicaid to be informed when small estate proceedings initiate.

Require a Notice to Medicaid or Small Estate Affidavit for Small Estates

The probate clippings are not timely enough to allow Medicaid enough time to file its claim. A notice to Medicaid or Small Estate Affidavit would resolve this timing issue and give the State time to file its claim before the estate closes. The FullCourt interface may help to resolve this timely notification issue, making the additional notice or affidavit less important. Yet, some counties may be delayed in reporting their information to the central FullCourt system, meaning the timing issue with the clippings will continue with the interface.

Consider Using Montana's Successor to Small Estates Status More Broadly

Montana should directly receive funds from estate asset resources in more instances than with personal needs accounts. The state is working on implementing this authority with bank accounts, and should consider other asset types that do not go through probate.

4.4.5. Non-Probate Account Collections

There are numerous deficiencies in the collection of the three asset types included in the estate questionnaire. These are listed below, by asset type, and include recommendations for improvement.

4.4.5.1. Personal Needs Accounts

Nursing facilities are required by law to turn over any remainders in residents' PNAs to Medicaid, after paying outstanding bills at the facility. Although nursing facilities know the requirement and are generally in compliance with it, the estate coordinator often has to call nursing facilities a month after receiving the questionnaire to inquire about the money.

4.4.5.1.1. Recommendations for Improvement

Use the MMIS to Identify PNAs

The TPL Unit should use MMIS claim information to identify where Medicaid recipients reside. With improved death information, the TPL Unit can reach out to nursing facilities regardless of whether questionnaires are returned, and increase its collections from this source.

Implement a Case Management System

The case management system could automatically generate notices to nursing facilities and prompt the TPL Unit to follow up when necessary.

Regularly Communicate with Nursing Facilities about Estate Recovery

The TPL Unit should regularly educate nursing facilities about estate recovery requirements. This communication could be through annual mailings or in-person opportunities.

4.4.5.2. Burial Funds

Funeral home directors in possession of burial accounts or insurance for deceased recipients are required to return any unused funds or funds in excess of \$5,000 to Medicaid. No mechanism exists to track burial fund information. The process relies on the voluntary actions of funeral directors or information discovered in the estate research questionnaire. Burial fund information exists in the TEAMS system case notes, which must be manually reviewed and retrieved. The estate research process does not investigate the potential for unknown funds through TEAMS and does not track whether funds are received or not.

4.4.5.2.1. Recommendations for Improvement

Use CHIMES-Medicaid to Better Identify Funeral Homes

The TPL Unit will be able to track down these funds by knowing the funeral homes. The recovery process will be manual, but at least will be more in control of the TPL Unit. Funeral home information should interface with the new lien and estate recovery system.

CHIMES-Medicaid does not capture the address of funeral homes, only the name. The TPL Unit will have to manually search for funeral homes if they do not send burial funds on their own. Vital statistics contains both funeral home names and addresses. CHIMES-Medicaid should receive and maintain this information once it the death registry interfaces with CHIMES-Medicaid.

Implement a Case Management System

The case management system could automatically generate notices to funeral homes and prompt the TPL Unit to follow up when necessary. The case management system will access funeral home contact information from the death database.

Regularly Communicate with Funeral Homes about Estate Recovery

The TPL Unit should regularly educate funeral homes about estate recovery requirements. This communication could be through annual mailings or in-person opportunities.

4.4.5.3. Checking/Savings Accounts

The estate research questionnaire requests information regarding checking and savings accounts, and instructs families to reimburse the state with any remaining funds in those accounts. Not all questionnaires are returned, and those that are, may or may not include refunded money. When questionnaires are returned without the remaining account funds, the estate coordinator responds with a request for payment.

Banks in possession of the account funds do not notify Medicaid when an account holder dies and do not pay remaining funds directly to Medicaid. The estate coordinator notifies the bank of a Medicaid claim against the accounts but the banks may already have disbursed funds. In some cases, accounts remain at the bank as unclaimed property, which the bank then must process through legal channels.

4.4.5.3.1. Recommendations for Improvement

Track Questionnaires and Follow Up on Unreturned Questionnaires

The TPL Unit should track all questionnaires, and follow up when families do not respond. This tracking will eventually be a part of the case management system, but should be implemented in the shorter term.

Require Banks to Reimburse the State Directly

A pending statute in the 2009 legislative session will authorize banks to directly disburse account remainders to Medicaid. The TPL Unit must continue to identify and track checking and savings accounts, and work with banks to directly repay the remaining monies.

Banks are not required to identify their recipients' Medicaid status, rather Medicaid must be able to identify bank accounts and notify the banks.

The State has to ensure that direct disbursement by the banks allows the same exemptions as exist in the lien filing and probate processes. Processes put in place with the banks must allow adequate time for exempt individuals to respond to the asset recovery.

If the legislation passes, the TPL Unit should regularly educate banks about estate recovery requirements. This communication could be through annual mailings or in-person opportunities.

Use TEAMS and CHIMES-Medicaid to Better Identify Checking and Savings Accounts

The TPL Unit should use TEAMS to identify bank accounts, and not rely solely on questionnaire responses for this information. CHIMES-Medicaid will provide more information than TEAMS regarding these accounts, but bank addresses will not be included and account numbers can be included, but are not a required field.

Implement a Case Management System

The case management system could automatically generate notices to banks and prompt the TPL Unit to follow up when necessary.

4.4.5.4. Under-collected and Uncollected Assets

Montana is not collecting on certain assets adequately or at all. Assets not included in the estate recovery questionnaire are generally not included in non-probated estate recovery processes. The reasons these assets are under- or uncollected include inadequate regulatory authority to collect the asset, insufficient information gathering at eligibility determination, inadequate policy implementation by OPA workers, and poor system ability to capture information. The different asset types are described briefly, with bulleted recommendations for improvement included at the end of the section. None of the asset types listed below is included in the estate questionnaire.

4.4.5.4.1. Special Needs Trusts

Developmentally disabled Medicaid recipients often have special needs trusts set up to provide for their care over the course of their lifetime. OPA workers provide this information to the TPL Unit when the trust is created or discovered at the point of eligibility determination, but at the time of death, the trust information is not always connected to the decedent's case.

Recommendations for improvement include:

- Use TEAMS and CHIMES-Medicaid to identify assets not listed in the questionnaire.
- Implement a case management system to better track recipient's asset information and share information with CHIMES-Medicaid via web services.

- Update the estate recovery questionnaire to either include this asset or auto-populate if this asset exists in CHIMES-Medicaid.

4.4.5.4.2. Self-Sufficiency Trusts

The Montana Self-Sufficiency Trust (MSST) accepts donations and generates income to provide supplemental services for individuals with special needs. Donations are administered for each individual recipient, and upon the death of the recipient, the remaining funds above 10 percent of the market value must be used to repay Medicaid claims. Parents Let's Unite for Kids (PLUK) is the Billings-based non-profit managing the self-sufficiency trust in Montana. PLUK has been slow to maintain information for the state regarding potential recoveries from the MSST and the state has not had a mechanism in place for efficiently obtaining this information.

Improving the estate research process to include researching potential MSST funds can capture this asset source. It may be necessary to apply some leverage with the PLUK organization to improve their information management regarding asset recovery.

Recommendations for improvement include:

- Use TEAMS and CHIMES-Medicaid to identify assets not listed in the questionnaire.
- Request updated information from PLUK on a regular basis until CHIMES-Medicaid is implemented.
- Receive updated self-sufficiency trust information through CHIMES-Medicaid, which should be receiving updated information from PLUK.
- Use PLUK information in the estate recovery process.
- Implement a case management system to better track recipient's asset information.
- Update the estate recovery questionnaire to either include this asset or auto-populate if this asset exists in CHIMES-Medicaid.

4.4.5.4.3. Retirement Accounts and Interest Earning Assets

Medicaid recipients often do not report retirement accounts when they apply for Medicaid eligibility because they do not understand or consider the accounts to be income or a resource.

Other interest-earning assets, such as stocks, bonds, and investments, are collected in the eligibility determination process, yet are overlooked in the estate recovery process.

Recommendations for improvement include:

- Specifically request information on retirement accounts during the application process.
- Use TEAMS and CHIMES-Medicaid to identify assets not listed in the questionnaire.
- Use DIFSLA to research unreported assets during the estate research process.
- Implement a case management system to better track recipient's asset information.
- Update the estate recovery questionnaire to either include these assets or auto-populate if these assets exist in CHIMES-Medicaid.

4.4.5.4.4. Interest on Overdue Payments

The Department has the option of adding interest to the amount recoverable if payment is overdue. To date, the Department has not exercised this option.

Recommendations for improvement include:

- Develop and consistently implement a policy about collecting interest, specifically including time and dollar thresholds.
- Track interest information in the case management system.

4.4.5.4.5. Eligibility-Excluded Assets

Certain assets are excluded from calculating Medicaid eligibility at the time of application, but are available as a source of Medicaid reimbursement. Because they are not relevant to eligibility determination, some OPA workers may not record them in TEAMS.

Recommendations for improvement include:

- Encourage more thorough information gathering during the application process. CHIMES-Medicaid will help improve the quality of information collected.
- Use DIFSLA to research unreported assets during the estate research process.
- Implement a case management system to better track recipient's asset information.
- Give specific feedback and metrics to OPA offices regarding assets unidentified at application and later identified by the TPL Unit.
- Update the estate recovery questionnaire to either include these assets or auto-populate if these assets exist in CHIMES-Medicaid or the case management system.

4.4.5.4.6. SSI Recipient Assets

Supplemental Security Income (SSI) recipients are not required to fill out a Medicaid application because the federal government has already verified their assets, income, and other eligibility factors. TEAMS receives SSI information from the BENDEX interface, which does not include specific asset information. Some SSI recipients may own a home that was excluded from the SSI eligibility determination process.

Recommendations for improvement include:

- Review the developmental disability eligibility audit results to determine whether there may be an estate recovery impact.
- Use the Accurate contract to identify SSI recipient assets.
- Determine if OPA offices could collect asset information from SSI recipients for lien and estate recovery purposes (not for eligibility determination).
- Implement a case management system to better track recipient's asset information, if available.

4.4.5.4.7. Contract for Deed

A Medicaid recipient must assign the remainder interest of a Contract for Deed to the State. Eligibility workers are supposed to enforce this requirement at application and redetermination, making recipients re-do their contracts if this assignment is not made. There is no training or enforcement of this requirement, and it may not be occurring consistently. When OPA workers do enforce Contract for Deed requirements, they often forget to complete the 121 Form. TEAMS also is not capturing Contract for Deed information.

Recommendations for improvement include:

- Train eligibility workers on Contract for Deed requirements and remembering the 121 Form when there is a Contract for Deed.
- Implement performance metrics or other oversight regarding OPA implementation of these requirements.
- Ensure CHIMES-Medicaid captures this information and have the information interface with the new lien and estate recovery system.
- Implement a case management system to better track recipient's asset information.

4.4.5.4.8. Life Insurance

In other states, the state is listed as the first remainder or beneficiary on life insurance, allowing them to easily recover monies from this resource.

Recommendations for improvement include:

- Consider passing legislation to name Montana as the first remainder/beneficiary on life insurance accounts. The legislation would have to be crafted to allow for exemptions and funeral payment.
- Use TEAMS and CHIMES-Medicaid to identify assets not listed in the questionnaire.
- Use DIFSLA to research unreported assets during the estate research process.
- Implement a case management system to better track recipient's asset information.
- Update the estate recovery questionnaire to either include this asset or auto-populate if this asset exists in CHIMES-Medicaid.

4.4.5.4.9. Annuities

Medicaid is entitled to be listed as the first remainder on annuities purchased after February 8, 2006. Eligibility workers should enforce this requirement at application, but it is not clear if this is happening. Annuity information is not captured adequately to make use of the first remainder status.

Recommendations for improvement include:

- Train OPA eligibility workers to capture annuities and enforce first remainder requirements at application.

- Establish performance metrics for correctly capturing annuity information and enforcing remainder requirements. Provide feedback to OPA offices relating to performance measures.
- Use TEAMS and CHIMES-Medicaid to identify assets not listed in the questionnaire.
- Expand estate questionnaire to specifically request information on annuities.
- Update the estate recovery questionnaire to either include this asset or auto-populate if this asset exists in CHIMES-Medicaid.
- Use DIFSLA to research unreported assets during the estate research process.
- Implement a case management system to better track recipient's asset information.

4.4.5.4.10. Long Term Care Insurance/Partnership

Montana is in the process of adopting rules and regulations related to the implementation of Long Term Care Partnerships. QAD will need to modify its lien and estate recovery processes upon implementation of these rules and regulations to better capture long term care insurance assets.

Recommendations for improvement include:

- Ensure Long Term Care Partnership information is captured and known to the TPL Unit.
- Implement a case management system to better track recipient's asset information.
- Update the estate recovery questionnaire to either include this asset or auto-populate if this asset exists in CHIMES-Medicaid.

4.4.5.5. Asset Summary

Asset	Statutory Gap	Regulatory Gap	System-Related Gap	Implementation/ Training Gap
Special Needs Trust			✓	✓
Self-Sufficiency Trusts			✓	✓
Retirement Accounts and Interest Earning Assets			✓	✓
Interest on Overdue Payments			✓	✓
Eligibility-Excluded Assets			✓	✓
SSI Recipient Assets			✓	
Contract for Deed			✓	✓
Life Insurance	✓		✓	✓
Annuities	✓		✓	✓
Long Term Care Partnership		✓	✓	✓

4.5. Community Spouses, Exempt Children, and Exempt Siblings

Montana's lien and estate recovery processes do not support the State's ability to collect on homes transferred to or resided in by community spouses, exempt children, and exempt siblings. Real property, including homes, is exempt from having a lien filed against it when Medicaid recipients transfer ownership of the asset during their six-month intent to return home or when certain individuals live in the home.

Federal regulation (42 CFR 433.36) does not allow states to impose liens on Medicaid recipients' real property if any of the following individuals is lawfully residing in the home:

- The spouse.
- The individual's child who is under age 21 or blind or disabled as defined in the State plan.
- The individual's sibling who has an equity interest in the home, and who was residing in the individual's home for at least one year immediately before the date the individual was admitted to the medical institution.
 - Montana State law requires siblings to live in the home for 18 months before the recipient's institutionalization, rather than one year (MCA 53-6-171 and SB0082.01, Section 5, changes to MCA 53-3-178).

Because of these exemptions and the fact Montana only uses TEFRA liens, Montana is unable to place liens against the homes of many Medicaid nursing facility recipients.

Once the Medicaid recipient dies, federal regulation (42 CFR 433.36) permits states to recover against the decedent's home:

- After the death of the individual's surviving spouse
AND
- When the individual has no surviving child under age 21 or blind or disabled child.
AND
- There is no eligible sibling remaining in the home who has lived there on a continuous basis since the former recipient's institutionalization.
OR
- There is no child of the decedent residing in the home, who has resided there for at least two years immediately before the date of the individual's admission to the institution, has resided there on a continuous basis since that time, and can establish to the agency's satisfaction that he or she has been providing care which permitted the individual to reside at home rather than in an institution.

The gap exists in Montana's process wherein the State loses track of the property and the exempt individuals. TEAMS only tracks information related to the recipient during the recipient's life. After the recipient's death, the case closes and spouse or other relative information is closed with the case.

An additional gap associated with community spouses, exempt children, and exempt siblings is that recipients often transfer property to them during their six-month intent to return home timeframe. Medicaid only files liens after the institutionalization is considered

permanent. Homes and other real property owned by the recipient are transferred before then, and Medicaid cannot recover from these assets.

4.5.1. Recommendations for Improvement

Implement a Case Management System

A case management system will help the TPL Unit better track community spouses and other exempt populations. Community spouse, exempt children, and siblings would then be tracked against probate and death information received and maintained by the system.

Use Interfaces or Shared Information to Obtain Death Information on Spouses, Children, and Siblings

The case management system could interface or share information with the Department of Motor Vehicles, the death database, and other sources to track information on exempt individuals' deaths.

Utilize Contingent Liens

This recommendation is repeated from the Intent to Return Home section of this report. The TPL Unit could file a lien that would be contingent on the recipient being permanently institutionalized, the recipient's death, and/or the spouse's, child's, or spouse's death within three years of the decedent. This would ensure that the TPL Unit does not lose track of real property assets.

Utilize Requests for Notice or Affidavits of Fact Relating to Title as a Tracking Mechanism

This recommendation is also repeated from the Intent to Return Home section of the report. This tool will ensure the TPL Unit knows of all sales or transfers of real property during the intent to return home timeframe. The case management system will associate the property with the new owner, and perhaps file a contingent claim or post-death lien to ensure Medicaid's ability to recover from the property.

Utilize Post-Death Liens as Tracking and Recovery Mechanism

The State could use post-death liens or requests for information to track the property of any exempt person after the death of the Medicaid recipient. Recovery could occur according to Department-defined guidelines, which may differ for spouses, siblings, and children.

Utilize Contingent Claims to Collect on Estates after Death of Spouse, Child, or Sibling

Contingent claims are similar to post-death liens, in that they protect Medicaid's claim against real property transferred to community spouses, exempt children, or exempt siblings. This claim would be filed when the Medicaid decedent's estate goes to probate. If the spouse, child, or sibling dies before the estate is closed, Medicaid can collect its claim.

4.6. Summary of Legislative Gaps

<p><u>Name Medicaid a Priority Creditor</u></p> <p>This one legislative change will enable to the TPL Unit to significantly increase its estate recoveries. This is the most important legislative change that the QAD should seek to implement. The benefits include:</p> <ul style="list-style-type: none"> ▪ Reducing negative impact of intent to return home on estate recoveries. ▪ Reducing relative importance of TEFRA liens. ▪ Allowing State to use Requests for Notice in place of TEFRA liens. ▪ Reducing importance of identifying probate cases within short time frames. ▪ Allowing State to collect from small estates without identifying them.
<p><u>Allow Use of Post-Death Liens</u></p> <ul style="list-style-type: none"> ▪ Post-death liens will allow the State to track and collect from assets that are currently lost in the asset recovery process. ▪ Post-death liens can also be used to collect from the estates of non-long term care Medicaid decedents.
<p><u>Require Estate Representatives to Notify Medicaid of Probate Cases Using Notice to Creditors</u></p> <p>Placing the burden for notification on estate representatives will enable the TPL Unit to identify more probate cases.</p>
<p><u>Correct Statutory Conflict between Probate and Estate Recovery Law and Require Notice to Medicaid or Small Estate Affidavit in Small Estate Processes</u></p> <p>The TPL Unit needs to know about small estates in order to collect debt from them. This notification is currently lacking.</p>
<p><u>Name State as Remainder/Beneficiary on Life Insurance</u></p> <p>The State could collect life insurance funds more easily if it were named the remainder on these accounts.</p>
<p><u>Create and Implement Use of Contingent Liens</u></p> <p>Montana could protect its interest in a recipient's property during the intent to return home timeframe by filing a lien contingent upon permanent institutionalization or death. This recommendation is not included in the to-be processes, but remains here as an option to pursue if other recommended options are not implemented.</p>
<p><u>Require Request for Notice or Affidavit of Fact Relating to Title from Title Companies</u></p> <p>Title companies should be required to notify Medicaid of the sale or transfer or any property relating to Medicaid recipients or their community spouses, exempt children, or exempt siblings. Legislation will ensure that title companies consistently follow the mandated communication process.</p>

4.7. Staffing

Montana has two staff members working on lien and estate recovery issues with the TPL supervisor and QAD bureau chief overseeing the processes. In addition, the Unit uses two attorneys, with neither working for QAD full time.

4.7.1. TPL Workload and Communication

The TPL Unit divides liens from estate recovery, with one staff member dedicated to lien processes and the other to estate recovery processes. The communication between the two subject matter experts is generally limited to viewing the other's actions on TortTracker.

4.7.1.1. Recommendations for Improvement

Improve Communication Between Internal Staff

The case management system will improve communication, but other improvements can be made before the new system is implemented. The lien and estate coordinators should be encouraged to email one another when their cases intersect. The TPL Unit can also pull cases from TortTracker with both lien and estate recovery activity and discuss how coordination can improve the way the case is handled.

Consider Reorganizing Workload Division

The current subject matter division creates siloed knowledge and a situation where the TPL Unit is not considering cases holistically. QAD should consider reorganizing the workload where each staff member has a certain number of cases, and works on both liens and estate recovery. This will ensure that neither process is solely dependent on one person's presence and knowledge, and will resolve communication gaps between the lien and estate recovery processes.

Implement a Case Management System

The case management system will allow the TPL Unit to manage staff workloads.

Provide Training for TPL Staff

The Department should provide training and professional development for TPL Unit staff addressing both subject matter knowledge and skills development. Attendance at TPL-related conferences, seminars, and courses will keep their skills and knowledge up to date. Inclusion in internal planning meetings and training in use of software tools and business processes could also provide value. The TPL Unit supervisor could additionally address knowledge and skills development through one-on-one coaching.

Implement Field Training for Eligibility Workers

The TPL Unit should consider implementing increased field training for eligibility workers. This training could increase OPA workers understanding of estate recovery issues and, as a result, increase asset identification and estate recoveries.

4.7.2. Department and State Attorney

The two attorneys operate independently of the TPL Unit, and request cases needing their attention when they have time. There are a variety of problems with the current process including:

- There is not enough transparency into the attorneys' workloads. QAD may not hear from the attorneys for long periods of time; they have no idea when to expect new cases to be requested and have limited knowledge of the ongoing status of cases previously handed over to the attorneys.
- The TPL Unit manually selects cases to send to the attorneys, trying to choose older cases or ones that may result in larger payments.

4.7.2.1. Recommendations for Improvement

Implement a New Case Management System

The case management system could increase communication with attorneys and help the TPL Unit quickly select cases based on aging and dollar amount criteria. The system could support caseload management using target and actual completion dates. The attorneys should have an electronic means or dashboard to update cases and to display progress performance metrics.

Implement Status Reporting

The TPL Unit should meet monthly with attorneys to discuss the status of cases in court, unusual cases, attorney workloads, and the Division's attorney needs. Attorneys should report case status, including activities of the past month, current status, and any predicted changes in meeting the target completion date. The TPL Unit should track cases requiring attorney attention, and report on the case queue.

Consider Using One, Full-Time Attorney

Using one full-time attorney may make improve transparency and communication issues. The TPL Unit should look at the current division of responsibility between the two attorneys, and see if the work could reasonably be consolidated. The Unit may want to wait to assess if the other recommendations create adequate improvement before making this change.

4.8. Performance Measures

Performance measures are a large gap in the current processes. Only a minimum amount of lien and estate recovery information is tracked and reported.

4.8.1. Recommendations for Improvement

Define Performance Measures

QAD must determine what measures it would like to track. There is not a consistent set of measures tracked nationally. The report includes a list of recommended performance measures in Appendix 6.5.

Build Performance Measures into the New Case Management System

The case management system should be designed to capture and report on selected performance measures.

4.9. System-Related Gaps

There is a plethora of system-related gaps. The TPL Unit ineffectively uses and shares information with systems and lacks a robust system for lien and estate recovery processes.

4.9.1. MMIS

The TPL Unit could better use and share information with the MMIS. Gaps with the claim system include:

- The TPL Unit does not use claim information on people in nursing facilities. These claims could validate 121 Forms currently used in lien research.
- The TPL Unit does not use death discharge codes from hospitals or nursing facilities. This information could identify deaths in the estate research process.
- The TPL Unit conducts separate queries for medical and pharmaceutical claims in the MMIS. The TPL Unit also has to manually total Buy-In costs, but that will stop being a factor on July 1, 2009, when the State cannot collect against Buy-In for estate recovery any longer.
- The MMIS does not include DD claim information, and the TPL Unit has to request a separate claim amount report from DDD.
- The TPL Unit struggles to identify claims where the social security number was entered incorrectly in the MMIS.
- The TPL Unit does not close outstanding recoveries in the MMIS. The TPL Unit should be showing recoveries against claims when they know against which claim to apply it. The Unit knows health insurance and casualty claims now, but is not marking them.

4.9.1.1. Recommendations for Improvement

Query the MMIS for Needed Information

Until the MMIS is replaced, the TPL Unit should query the MMIS for death discharge codes and nursing facility claim information to improve lien and estate recovery processes.

Once the case management system is implemented, the TPL Unit should regularly get lists of recoverable claims from the MMIS. The case management system could automatically associate claims with cases and maintain the information. This information exchange could be automatic once the MMIS is replaced. Until then, the TPL Unit will have to query the MMIS for this information.

Interface Case Management System with the MMIS for Better Information Sharing

The interface or information sharing using web services could allow the TPL Unit to automatically receive death discharge codes, nursing facility claim information, and other recoverable claim information.

Close Outstanding Recoveries in the MMIS

Closing out identifiable recoveries in the MMIS will improve reporting accuracy. Claim closure could happen through an interface or directly in the MMIS.

Participate in MMIS Detail Design Sessions with New Contractor

QAD's participation can help improve the TPL Unit's access to usable information. The separate queries issue should be resolved in this setting, as should identifying claims with incorrect social security numbers. The TPL Unit should attend sessions regarding the billing module for postpayment recovery and financial system sessions.

4.9.2. TEAMS

The TPL Unit could better use and share information with TEAMS. Gaps with the eligibility system include:

- Data in TEAMS can be unreliable because:
 - TEAMS does not prompt eligibility workers to identify and enter all assets. Some OPA workers are not including assets excluded from eligibility determination, which can be collected in estate recovery.
 - Relevant special needs trust information is not always entered into TEAMS.
 - TEAMS does not contain adequate information on homes, particularly in cases where the TPL Unit does not have a lien filed.
 - TEAMS does not capture burial fund or funeral home information.
 - TEAMS does not send updated asset or account information to the TPL Unit when it is reported.
- TEAMS does not track community spouse information after the Medicaid recipient dies.
- The TPL Unit has to manually input deceased recipient information from TEAMS into TortTracker, including name, social security number, and date of death.
- Eligibility workers can close cases because of recipient death without entering date of death. The TPL Unit has to manually update TEAMS with the date of death in this case.

4.9.2.1. Recommendations for Improvement

CHIMES-Medicaid Will Increase Information Accuracy

CHIMES-Medicaid will require eligibility workers to process applications in a certain order, prompting workers to request specified asset information. The new eligibility system will also contain a lot more information on each asset, which the TPL Unit will be able to search as data fields, without having to pore over case notes. Additionally, using the contractor, Accurate, will increase resource information accuracy.

Train Eligibility Workers to Collect Complete Asset Information

The new system alone will not guarantee that eligibility workers collect complete asset information. The TPL Unit should work with county OPA offices to train eligibility workers on the importance of doing so and how to properly use CHIMES-Medicaid.

Share Information Between the Case Management System and CHIMES-Medicaid Using Web Services

The case management system should electronically share information with CHIMES-Medicaid to eliminate the need for the TPL Unit to manually enter asset information. This interfaced information will be compared with and augment information received on returned questionnaires.

Request CHIMES-Medicaid Enhancements to Support Efficient Lien and Estate Recovery Processes

CHIMES-Medicaid will need to be changed to fully support new lien and estate recovery processes. The identified enhancements are:

- The TPL Unit should receive death information electronically from CHIMES-Medicaid. Any of the following will accomplish this:
 - The deceased recipient report should be shared with the case management system electronically.
 - CHIMES-Medicaid could alert the TPL Unit of new deaths on a daily basis.
 - CHIMES-Medicaid could create work queues in the TPL Unit's case management system when new deaths are identified.
- CHIMES-Medicaid should maintain addresses of funeral homes. This information is contained in Vital Statistic's death registry.
- CHIMES-Medicaid should maintain bank account numbers and addresses.
- CHIMES-Medicaid should maintain Contract for Deed information.
- CHIMES-Medicaid should use web services to share information with the case management system.
- CHIMES-Medicaid should maintain LTC insurance/partnership information.

4.9.3. TortTracker

Montana lacks a lien and estate recovery system. Montana's TortTracker Access database manages liens and estate recoveries manually and ineffectively. Problems with TortTracker include:

- The TPL Unit manually enters all cases and case information into TortTracker.
- Cases are only entered at the coordinators' discretion. Cases are tracked with paper forms or in the questionnaire database until they are entered, letting them easily be forgotten.
- TortTracker does not have ticklers, alerts, or other automatic ways to force case review. The TPL Unit manually enters review dates, and runs reports to list cases with review dates. These review dates can be spaced as much as year or two apart.
- Reporting abilities are unsophisticated and inadequate.
- TortTracker does not track estate questionnaires. A separate database is used and the TPL Unit uses the notes field for information received from estate recovery questionnaires.
- TortTracker does not monitor caseloads for the TPL Unit or the attorneys.
- TortTracker does not track performance measures/metrics, including how long cases have been open, average time to close, and current status.
- TortTracker does not estimate probable recovery amount, to prioritize cases.

4.9.3.1. Recommendations for Improvement

Replace TortTracker with a Case Management System

TortTacker needs to be replaced with a case management system containing a document management system. A case management system will create improvements in all ten lien and estate recovery component processes as well as in supporting processes, like communication and performance measurement.

Washington State may have the best model of an in-house system. Montana should look at this system for an example of possible functionality. Montana should also explore commercial off the shelf case management system options and whether the case management functionality of the CHIMES systems could be enhanced to accommodate lien and estate recovery functionality.

Create the Case Management System to Work within Enterprise Architecture Model

DPHHS is implementing an enterprise architecture vision with its new system developments. The TPL Unit must ensure that the new case management system or web services work(s) with that vision.

4.9.4. Accounts Receivable Management System

The current payment receipt process is inefficient. The process uses ACS unnecessarily and requires manual reconciliation.

4.9.4.1. Recommendations for Improvement

Use the Accounts Receivable Management System (ARMS) for Receipt Processes

ARMS can serve as the TPL Unit's accounting system. Estate recovery claims can be established as non-receivable accounts in ARMS. ARMS will eventually be a web service within the shared fiscal services layer (SFSL). The new case management system should interface with the SFSL for receipt processing once this occurs. Using ARMS through the SFSL will eliminate the need for redundantly storing and reconciling accounting information.

4.9.5. Department of Motor Vehicles/Department of Revenue

The TPL Unit does not currently use any information from the Department of Motor Vehicles or the Department of Revenue.

4.9.5.1. Recommendations for Improvement

Consider Using DMV or DOR Information to Track Spouse, Child, and Sibling Residence

The DMV or DOR could provide residence information on community spouses, exempt children, and exempt siblings. The new case management system could potentially interface with one of these systems to automatically retrieve this information.

4.9.6. Death Database

The ISB's death database was discussed in section 4.4.1, Identifying Medicaid Recipients' Deaths.

4.9.7. Cadastral

The ISB's new Cadastral property search was discussed in section 4.3.1, Lien Research.

4.9.8. FullCourt

The interface with the Court Administration's FullCourt system was discussed in section 4.4.3, Additional Sources of Probate Information.

SECTION 5. To-Be Processes

5.1. Introduction

This section of the report reorganizes the recommendations from the previous section into the component processes described in the as-is section of the document. Because of this, there is some redundancy between this section and section 4, the gap analysis section. We tried to be more succinct in the to-be process section since the recommendations are fleshed out more thoroughly in the gap analysis section.

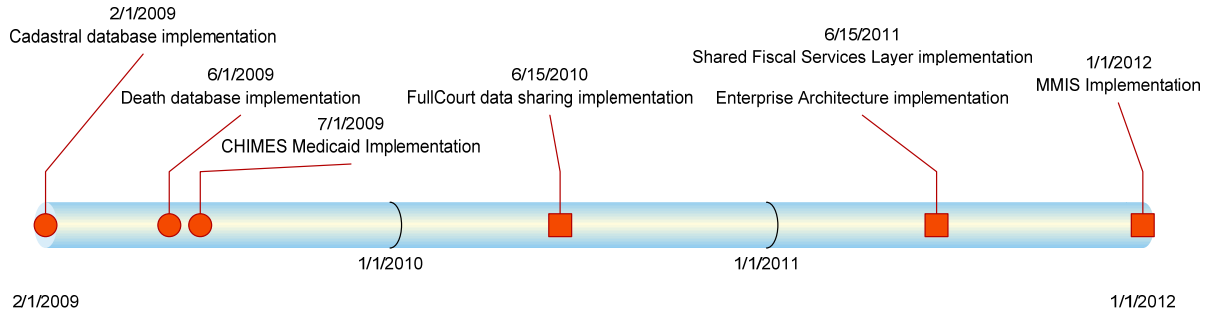
We separated the to-be processes into three types – quick wins, medium term changes, and longer-term recommendations. Quick wins will be defined as changes that can be made within 90 days and without legislative changes or additional resources (staff or financial). Medium term will be within one year. Longer term will be anything longer than a year. We map only the longer term/end result.

Some of the gap analysis recommendations do not fit neatly into a process map. We include a section on supporting processes, such as training, communication, reporting, and performance measures at the end of this section. These recommendations are not mapped, but we categorized them by short, medium, and long term.

We identified several constraints, which impact Montana's ability to implement some recommendations. These constraints helped us determine which recommendations to include and in what timeframe to place included recommendations.

- Federal statutes and regulations must support any recommendation. We do not include any recommendations that are unsupported federally.
- Any recommendation requiring statutory changes at the State level cannot be implemented until the next legislative session in 2011.
- DPHHS is in the midst of a large number of system projects. The timeline below provides a rough outline of when each of the new systems will be implemented. Cadastral, the death database, and CHIMES-Medicaid implementation will impact medium term recommendations. FullCourt, SFSL, and the MMIS will impact the long term picture.
 - An estate recovery case management system may be a medium or long term solution, depending on the alternative chosen by the Department. This report includes case management system changes in the medium term. The TPL Unit's implementation of a case management system that exchanges information with other systems using the Department's enterprise architecture is the most significant change or recommendation impacting the to-be process maps.

System Implementation Timeline:



Specific dates are placeholders only. Actual dates may vary.

Three tables summarizing the recommendations and their potential benefits to the program are included in section 1.4 of the report. Within these tables, we identify each recommendation as high, medium, or low priority. We also include these prioritization ratings in the recommendation headings in the following subsections.

5.2. Lien Research

5.2.1. Introduction

The to-be lien research process is considerably different from the as-is process. The main differences are using improved technology for improved information sharing and tracking community spouses, exempt children, and exempt siblings in addition to Medicaid recipients. The case management system is central to both of these changes.

5.2.2. Quick Wins

Query the MMIS for Lien and Estate Recovery Information (High Priority)

Establish canned queries to capture nursing facility claims that meet certain criteria (e.g., nursing facility recipient residing in an institutional facility for more than 6 months). This information should be used to identify new liens and validate whether the OPA offices sent all applicable 121 Forms.

Use TortTracker for Community Spouse, Exempt Child, and Exempt Sibling Information (High Priority)

Until the case management system is implemented, the TPL Unit should enter available spouse, child, and sibling information into TortTracker as recipients. Set review dates and track death information on these family member exemptions as if they were Medicaid recipients.

Streamline Property Research with Statewide Cadastral System (High Priority)

Use the statewide Cadastral system to streamline property research and likely capture information about more recoverable property.

Provide Feedback to OPA Offices (Low Priority)

When the TPL Unit discovers missing 121 Forms from the MMIS query, the OPA office should be given feedback. The TPL Unit and OPA office will need to determine how to capture information on the 121 Form from nursing facility residents.

Send Hardship Waiver Information (Low Priority)

The TPL Unit should send hardship waiver information with the Notice of Intent to File a Lien.

5.2.3. Medium Term Recommendations

Receive Additional Information from CHIMES-Medicaid (High Priority)

The TPL Unit will receive an increased number of 121 Forms from CHIMES-Medicaid. Hopefully these forms will be sent electronically and will eventually auto-populate information into the case management system. The TPL Unit may have to manually enter CHIMES-Medicaid information into TortTracker and the new case management system in the medium term.

Implement a Case Management System (High Priority)

A case management system should support the following lien research functions:

- Identify Medicaid recipients against whom a lien could be filed (nursing facility applicants).
- Electronically share information regarding new property found on Cadastral with CHIMES-Medicaid.
- Electronically receive information regarding Medicaid status (pend, approve, deny) from CHIMES-Medicaid.
- Identify exemptions (intent to return home, spouse, etc.) and create alerts or put cases in a work queue when exemption status changes or time associated with exemption is close to expiration.
- Support a document management system that automatically generates notices of intent to file liens and hardship waiver information.
- Electronically receive residence information on community spouses, exempt children, and exempt siblings from the Department of Motor Vehicles, the Department of Revenue, or another source.

Provide Feedback to OPA Offices (High Priority)

The TPL Unit should continue to provide feedback to the OPA offices about missing real property information. Performance metrics should be established to ensure long-term improvement in real property information collection.

5.2.4. Long Term Recommendations

Flag Recipients Identified for Lien and Estate Recovery within the MMIS (High Priority)

The case management system could automatically identify recipients who are candidates for estate recovery within the MMIS.

The MMIS could also alert the TPL Unit when changes occur for flagged recipients, including changes to claim activity or Medicaid status.

MMIS Automatically Sends Lien and Estate Recovery Claim Information (High Priority)

The TPL Unit should automatically receive information on recoverable claims from the MMIS without querying the system. The case management system could automatically check that it has information on all recipients associated with these claims.

Pass Legislation Allowing Requests for Notice or Affidavits of Fact Relating to Title (High Priority)

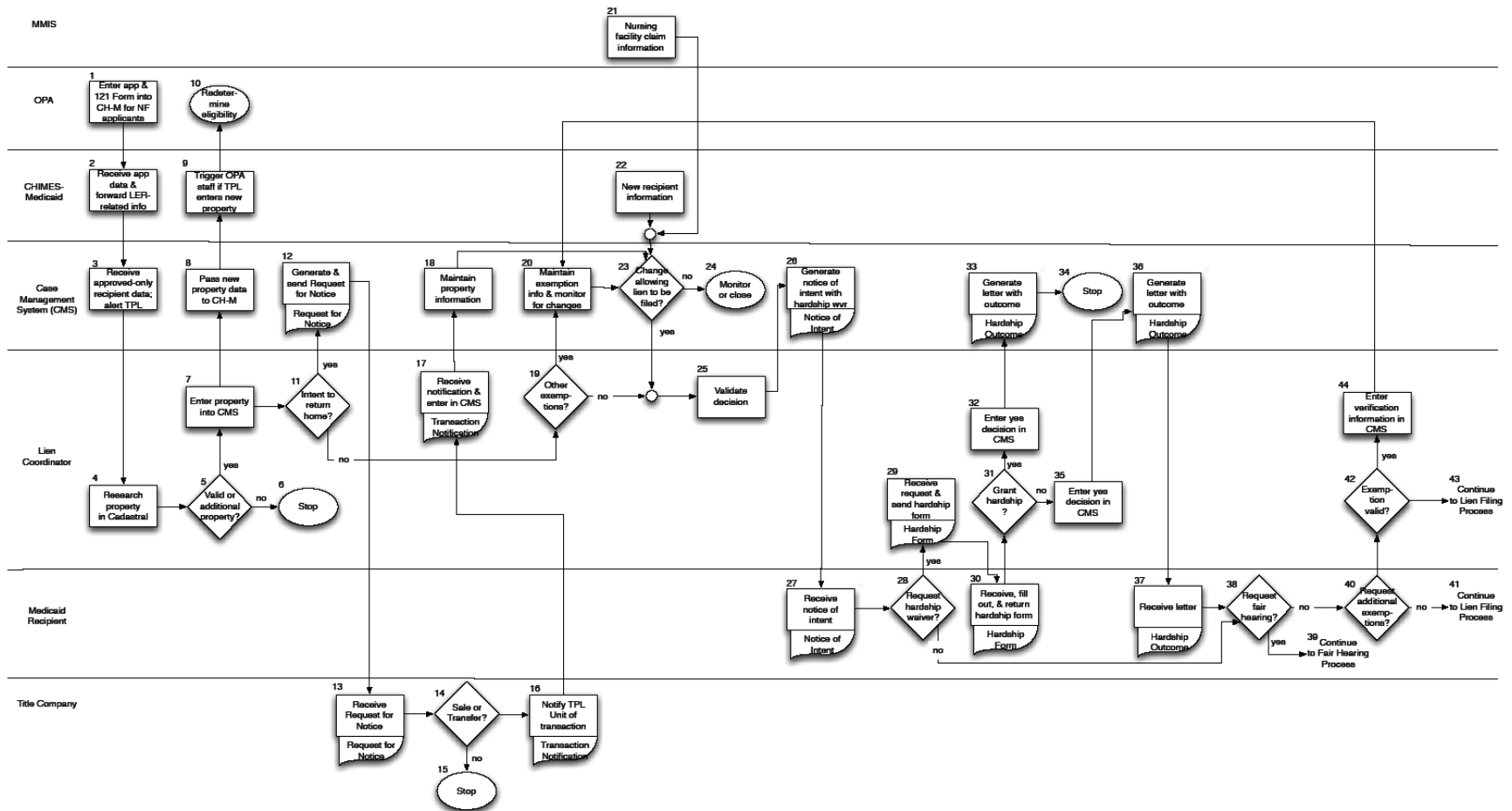
Either of these tools will allow the TPL Unit to track property associated with recipients and their community spouses, exempt children, and exempt siblings.

Provide Feedback to OPA Offices (Medium Priority)

The TPL Unit should continue to provide feedback to the OPA offices about missing real property information. Performance metrics should be established to ensure long-term improvement in real property information collection.

5.2.5. Process Map

To-Be Lien Research Process



5.2.6. Step-by-Step Process Description

1. Trigger: The OPA worker completes a 121 Form with a nursing facility applicant, entering the information into CHIMES-Medicaid.
2. CHIMES-Medicaid captures the application and 121 Form information, and determines eligibility (pend, approve, deny) and lien and estate recovery exemptions.
3. The case management system receives the information from CHIMES-Medicaid and alerts the lien coordinator or puts the new real property information into her work queue.
4. The lien coordinator researches the property legal description in Cadastral, and also looks to see if the applicant has additional property than what is listed on the form.
5. The lien coordinator determines if the property listed exists and if the applicant has additional property.
6. If the property does not exist, this is entered into the case management system and the process stops.
7. If valid property exists and/or new property is discovered, the lien coordinator enters the property information, including the legal description into the case management system.
8. The case management system passes new property information back to CHIMES-Medicaid for eligibility verification.
9. When CHIMES-Medicaid receives additional property information, it triggers an eligibility worker to act.
10. An OPA eligibility worker re-determines eligibility with the new real property information.
11. The lien coordinator checks to see whether the case management system identifies the recipient as having an intent to return home.
12. If there is an intent to return home, the system will automatically generate and send a Request for Notice or Affidavit of Fact Relating to Title to the title company.
13. The title company receives the Request for Notice or Affidavit of Fact Relating to Title.
14. The title company will be aware if there is a sale or transfer.
15. If a sale or transfer never occurs, the title company's role stops.
16. If a sale or transfer occurs, the title company will notify the lien coordinator.
17. The sale or transfer information will be logged in the case management system.
18. The case management system maintains this information. It may act on this information later, if a post-death lien is filed following the recipient's death.
19. The lien coordinator will look to see if the case management system identified other exemptions. If it does not, the process moves to step 25.

20. If it did, the system will maintain that information so the status of the exemptions will be continually monitored for changes.
21. The MMIS sends claim information, which verifies if the recipient still resides in a nursing facility after six months.
22. CHIMES-Medicaid may pass new information regarding a recipient's status to the case management system, which could impact the TPL Unit's ability to file a lien. This could be information about a recipient's death, initiating a post-death lien, or return home, which could close an individual's file.
23. The case management receives this information and uses its rules-based monitoring (e.g. the intent to return home expires in six months) to determine if a Notice of Intent to File a Lien can be sent.
24. The case management system may determine that the file should be closed or that the case should continue to be monitored. The decision is made based off the rules-based logic built into the system.
25. If the case management system determines that a lien can be filed, the lien coordinator validates the decision.
26. Once validated, the case management system generates and send a Notice of Intent to File a Lien, which includes hardship waiver information for the recipient. The notice may be for pre- or post-death liens.
27. The Medicaid recipient receives the notice of intent and the hardship waiver information.
28. The Medicaid recipient decides whether to file a hardship waiver.
29. If the recipient wants to request a hardship waiver, the recipient requests a form from the lien coordinator.
30. The lien coordinator receives the request and forwards the hardship waiver form to the recipient.
31. The lien coordinator decides whether to grant the hardship.
32. If the hardship request is granted, the decision is entered into the case management system.
33. The case management system generates and sends a letter with the hardship waiver request outcome.
34. When the hardship is granted, the process stops.
35. If the hardship request is not granted, the decision is also entered into the case management system.
36. The case management system generates and sends a letter with the hardship waiver request outcome.
37. The recipient receives the hardship waiver request outcome letter, regardless of the outcome. If it is in their favor, the process stops.
38. The Medicaid recipient decides whether to request a fair hearing.

39. If the Medicaid recipient requests a fair hearing, the fair hearing process begins.
40. If the Medicaid recipient or estate representative does not request a fair hearing, they then decide whether to request exemptions.
41. If the Medicaid recipient does not request exemptions, the lien filing process begins.
42. If the Medicaid recipient requests exemptions, the lien coordinator determines if they are valid.
43. If the exemptions are not valid, the lien filing process begins.
44. If the exemptions are valid, the lien coordinator enters them in the case management system and the process continues at step 20, where the system monitors the case for changes allowing a lien to be filed.

5.3. Lien Filing

5.3.1. Introduction

Significant changes from the as-is to the to-be processes for lien filing include: 1) additional types of liens may be used, and 2) payments to county clerks and recorders will not be paid by individual check. The process applies to both TEFRA and post-death liens.

5.3.2. Quick Wins

Create Accounts for Clerk and Recorder Payments (Medium Priority)

The TPL Unit should work with counties to create a new payment system accounts paid on a monthly basis. The individual \$1, \$2, \$5, or \$7 checks sent to counties should be removed from the process.

5.3.3. Medium Term Recommendations

Implement a Case Management System (High Priority)

A case management system should support the following lien filing functions:

- Link death information from CHIMES-Medicaid and the death database to liens, so new deaths are automatically associated with TEFRA liens.
- Support a document management system that automatically generates and records documents and correspondence to estate representatives and clerk and recorder offices.
- Automatically sets review dates according to predetermined criteria, allowing case-by-case overrides by staff.

5.3.4. Long Term Recommendations

Pass Legislation Allowing Post-Death Liens (High Priority)

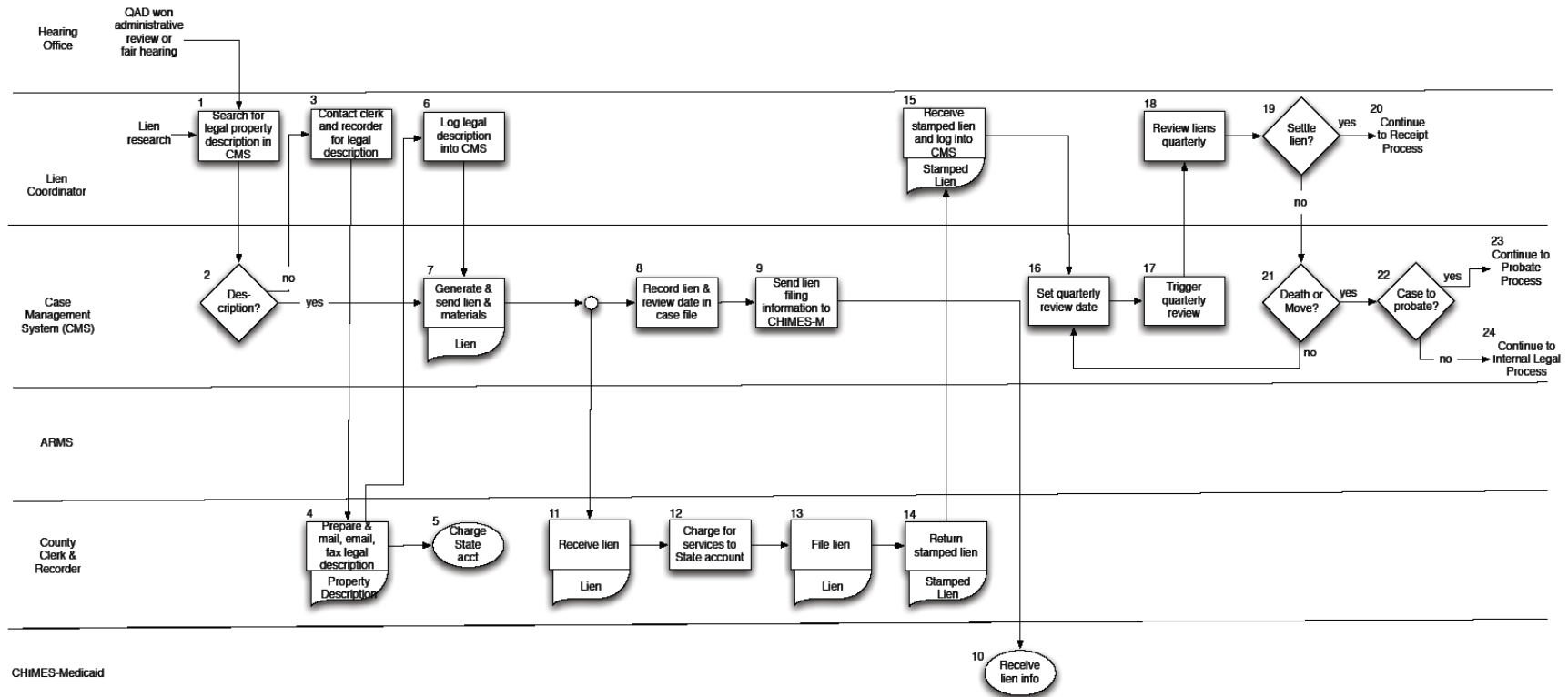
The State could use post-death liens to claim an interest in and track the property of any exempt person after the death of the Medicaid recipient. Recovery could occur according to Department-defined guidelines, which may differ for spouses, siblings, and children. Death information from CHIMES-Medicaid or the death database could trigger post-death lien filing.

Utilize the Shared Fiscal Services Layer (Medium Priority)

Develop the case management system to share information with the shared fiscal services layer, which could manage monthly payments to county clerks and recorders.

5.3.5. Process Map

To-Be Lien Filing Process



5.3.6. Step-by-Step Process Description

Triggers: The lien filing process is either triggered by the completion of the lien research process or by QAD winning an administrative review or a fair hearing.

1. The lien coordinator searches for the legal property description in the case management system.
2. The description would be present in the system if it were present in Cadastral, since that information was put into the case management system during lien research.
3. If the legal description is not available, the lien coordinator contacts the clerk and recorder for the description.
4. The clerk and recorder prepares and sends the legal property description to the lien coordinator.
5. The clerk and recorder may bill for its services using the State's account, which is settled on a monthly basis.
6. When the lien coordinator obtains the legal description from the clerk and recorder, she logs the description into the case management system.
7. Once the legal description is in the case management system, it automatically generates and sends the lien and associated materials to the county clerk and recorder.
8. The case management system automatically records the lien mailing date sets a review date of a month to ensure the lien coordinator receives the stamped lien back from the county.
9. The case management system sends the lien filing information to CHIMES-Medicaid so eligibility workers know about the lien.
10. CHIMES-Medicaid receives and maintains the information.
11. The county clerk and recorder receives the lien materials.
12. The county clerk and recorder bills for its filing services using the State's account, which is settled on a monthly basis.
13. The clerk and recorder files a copy of the lien.
14. The clerk and recorder stamps the lien and returns it to the lien coordinator.
15. The lien coordinator receives the stamped lien and logs the information into the case management system
16. The case management system sets a quarterly review date for the case. The lien coordinator can override the quarterly review date with a custom timeframe.
17. The case management system prompts the lien coordinator with the review date on a quarterly or custom timeframe.
18. The lien coordinator reviews the case when prompted.
19. The lien may be settled for a variety of reasons.

20. If the lien settles, the receipt process begins.
21. If the lien was not settled, the case management system continually tracks whether the recipient, community spouse, exempt child, or exempt sibling dies or moves. If the recipient, spouse, child, or sibling has not died or moved, the case management system returns to step 16 and resets the quarterly review date.
22. If the recipient, spouse, child, or sibling dies (death information comes from the death database) or moves the case management system checks for probate information on the case (probate information comes from estate research sources of the FullCourt system and notification from estate representatives).
23. If the case goes to probate, the probate process begins. The case management system can remind the lien coordinator (if it remains a separate role) to review the lien on a regular basis if the logic is built into the business rules. Ideally the lien will be reviewed as a part of the probate process, and the lien filing process ceases when the probate process begins.
24. If the case has not gone to probate within a defined time period, the case management system flags the case to move to the internal legal process.

5.4. Fair Hearing

5.4.1. Introduction

The to-be process for fair hearings is almost identical to the as-is process. The to-be process differs in that correspondence will be automated by the document management system within the future case management system.

5.4.2. Quick Wins

We did not identify any quick wins for the fair hearing process.

5.4.3. Medium Term Recommendations

Implement a Case Management System (High Priority)

A case management system should support the following fair hearing functions:

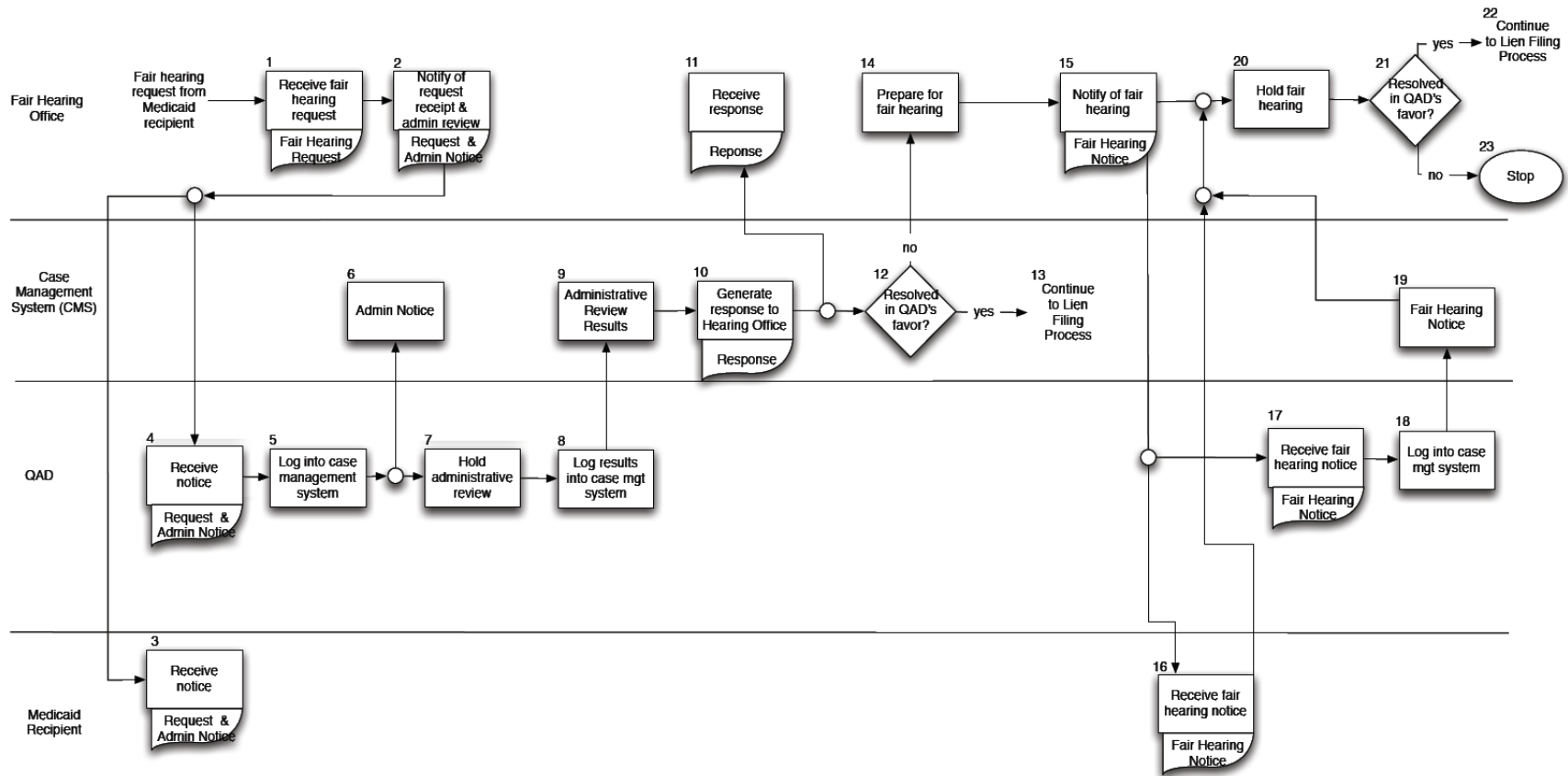
- Support a document management system that automatically generates and records documents and correspondence, such as the administrative review response and fair hearing notice.

5.4.4. Long Term Recommendations

We did not identify any long term recommendations for the fair hearing process.

5.4.5. Process Map

To-Be Fair Hearing Process



5.4.6. Step-by-Step Process Description

1. Trigger: The Fair Hearing Office receives a fair hearing request from a Medicaid recipient. Recipients must submit their fair hearing requests in writing within thirty (30) days from the receipt date of the Department's notice of intent to file a lien letter.
2. The Fair Hearing Office notifies the QAD and the Medicaid recipient of receipt of the request.
3. The Medicaid recipient receives the notice from the Fair Hearing Office.
4. QAD receives the notice from the Fair Hearing Office.
5. QAD logs the request into the case management system.
6. The system maintains the fair hearing information.
7. QAD conducts an administrative review of the Medicaid recipient's request to challenge the Department's intent to file a lien.
8. QAD logs the review results in the case management system within 20 days of original notice.
9. The system receives and maintains the results.
10. The case management system automatically generates and sends the response to the administrative review to the Hearing Office.
11. The Fair Hearing Office receives the review results.
12. If the results are in support of QAD,
13. The lien filing process begins.
14. If the administrative review results in a decision in favor of the Medicaid recipient, a fair hearing may or may not take place. If the fair hearing takes place, the Fair Hearing Office prepares the necessary information and materials for the hearing between QAD and the Medicaid recipient.
15. The Fair Hearing Office notifies QAD and the Medicaid recipient that a fair hearing has been granted.
16. The Medicaid benefit recipient or estate representative receives notification of the Fair Hearing Office decision to proceed with the hearing.
17. QAD receives notification of the Fair Hearing Office decision to proceed with the hearing.
18. QAD enters the information into the case management system.
19. The case management system receives and maintains the information.
20. The Fair Hearing Office conducts the hearing.
21. If the hearing results in a decision to support the QAD,
22. The lien filing process begins.

23. If the hearing results in a decision on behalf of the Medicaid recipient, a medical services lien is not imposed and the process stops.

5.5. Probate Attorney

5.5.1. Introduction

We identified minor changes to the probate attorney process. The TPL Unit needs more transparency into its attorneys' caseloads and better, more regular communication regarding the status of cases. The Department attorney also needs to communicate better with county courts. These communication improvements are not evident in the process map, but are a foundation for improved probate outcomes.

5.5.2. Quick Wins

Improve Communication with Probate Courts (Medium Priority)

More and ongoing communication between probate courts and the Department's attorneys should be established. The Department attorneys need to request regular updates from the courts on open cases. The attorneys should follow up on cases erroneously closed with unpaid Medicaid claims.

Implement Attorney Status Reporting (Medium Priority)

The TPL Unit should meet monthly with attorneys to discuss their work status.

5.5.3. Medium Term Recommendations

Implement a Case Management System (High Priority)

A case management system should support the following probate attorney functions:

- Select cases for attorneys based on criteria such as aging and recoverable amount.
- Automatically assemble and deliver available case materials from QAD to attorneys.
- Support attorneys entering case status into the system.
- Track attorney caseloads and progress, potentially using an electronic dashboard.
- Support a document management system that automatically generates and records documents and correspondence to families, estate attorneys, and district courts and clerk and recorder offices.
- Track costs associated with attorneys, and eventually integrate with the shared fiscal services layer.

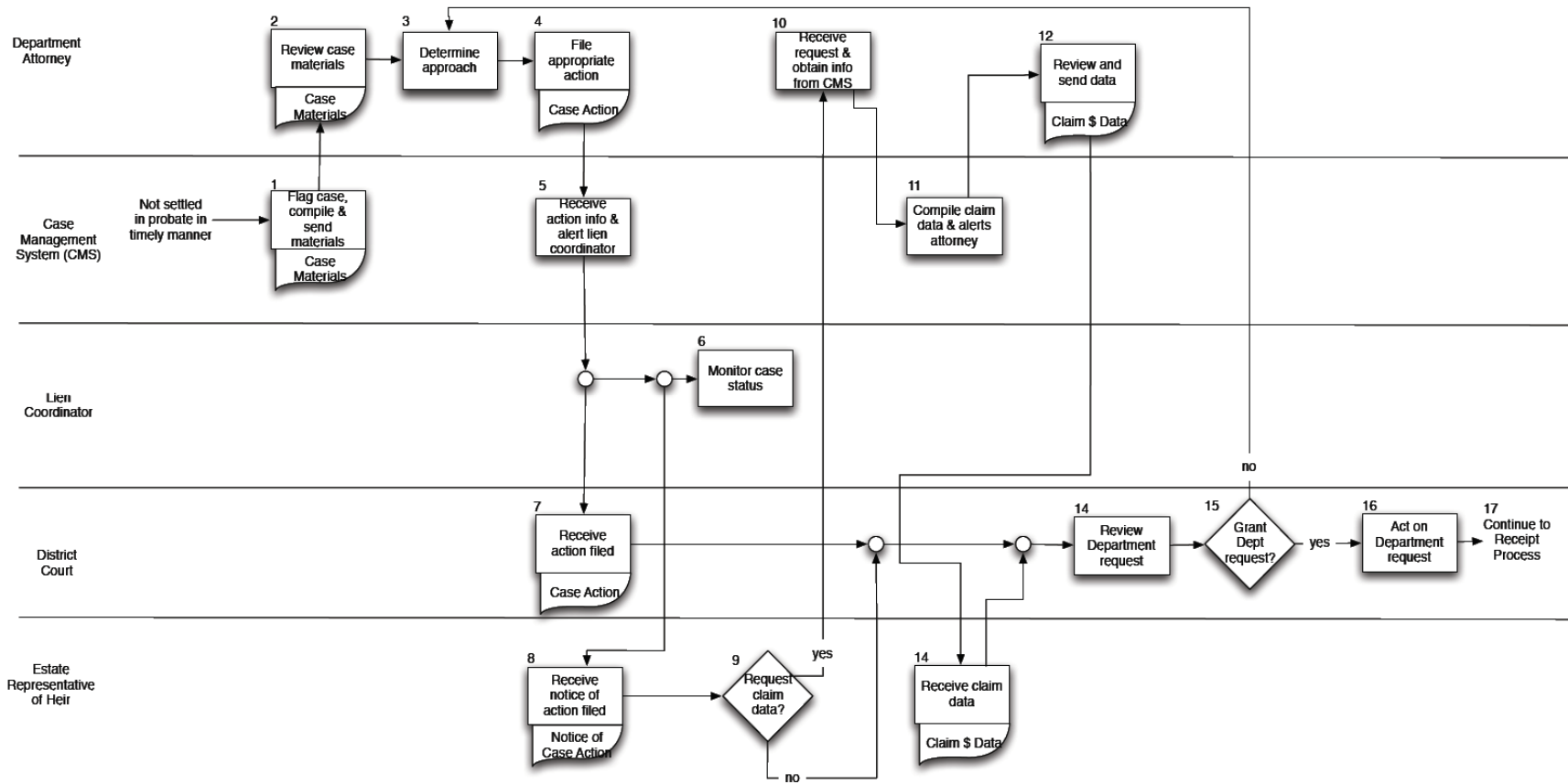
5.5.4. Long Term Recommendations

Receive Probate Information from FullCourt System (High Priority)

Develop the case management system to receive daily updates on case status from FullCourt.

5.5.5. Process Map

To-Be Probate Attorney Process



5.5.6. Step-by-Step Process Description

Trigger: The case is not settled in probate in a timely manner. Information on case timeliness comes from the FullCourt system, updates from estate representatives, and improved communication between county courts and the Department and its attorneys.

1. The case management system flags cases not settled in the probate queue for attorney assignment and compiles and sends materials. The system selects cases based on aging and estimated recovery value or other Department-defined criteria.
2. The Department attorney reviews and conducts research on the case as appropriate.
3. The Department attorney determines an appropriate estate recovery approach based on case file information.
4. The Department attorney files the appropriate legal action, putting the information into the case management system.
5. The case management system receives the action information and alerts the lien coordinator of the action.
6. The lien coordinator monitors case status.
7. The district court receives the action filed by the Department attorney.
8. The estate representative or heir receives a copy of the action filed in district court.
9. The estate representative or heir decides whether to request claim total data from the Department. If yes, the estate representative or heir sends a request to the Department attorney. If no, the process moves to step 14 where the district court acts on the Department request.
10. The Department attorney receives the request for claim information obtains the claim information from the case management system.
11. The case management system compiles the claim data from the MMIS, totals and alerts the Department attorney.
12. The Department attorney reviews the claim data and forwards it to the estate representative or heir.
13. The estate representative or heir receives the claim total data.
14. The district court reviews the probate case based on the action filed by the Department attorney.
15. The district court determines whether to grant or deny the Department's request. If the district court does not grant the Department request, the Department's attorney reassesses the approach to the case (step 3) and determines whether there are other legal options to pursue in order to recover Medicaid funds.
16. If the district court grants the Department their request, the court executes the request, and the estate must satisfy the claim amount owed to the Department.
17. The receipt process begins.

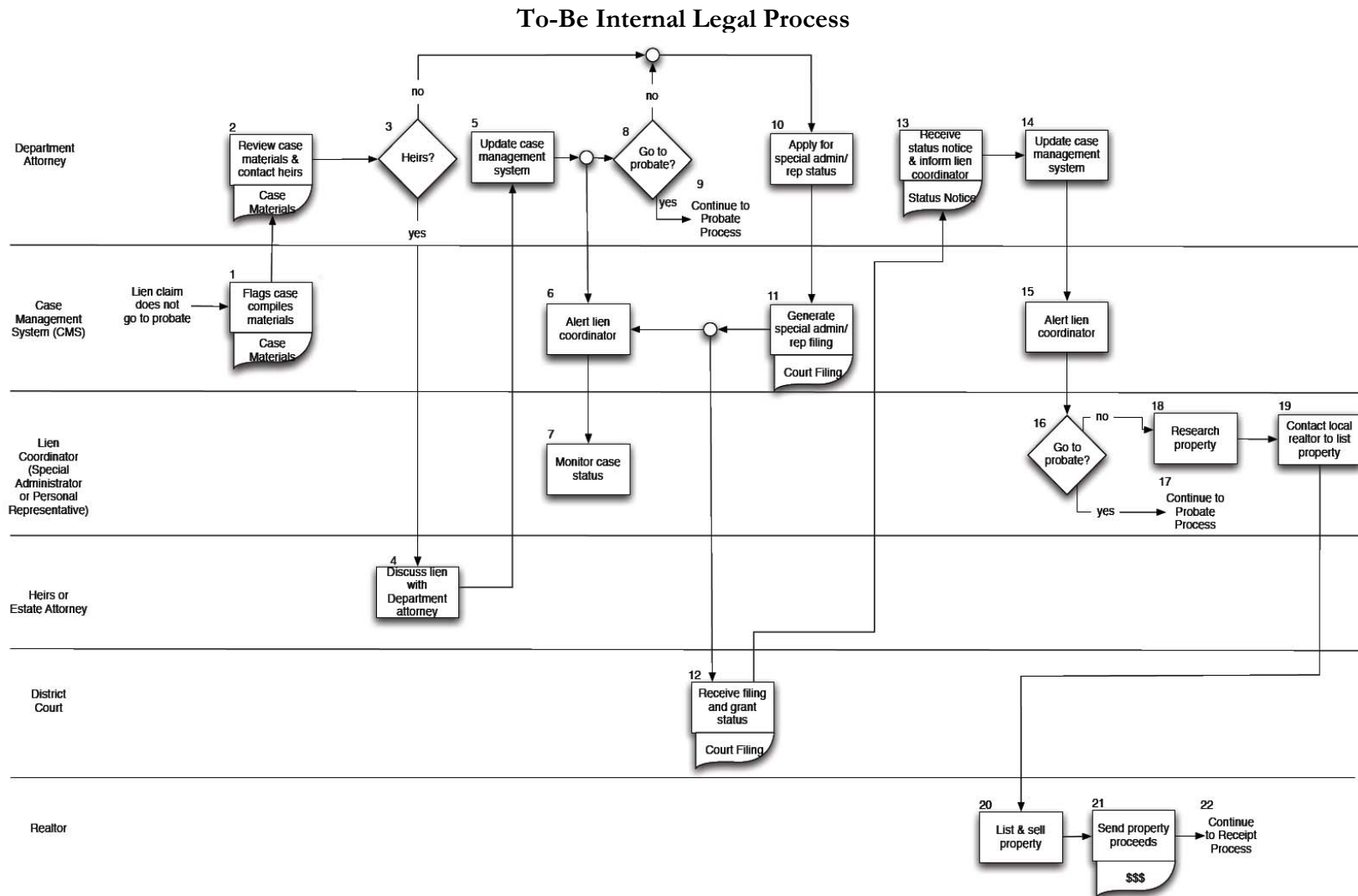
5.6. *Internal Legal*

Recommendations are identical to probate attorney recommendations, although processes remain distinct.

5.6.1. Introduction

The recommendations from the preceding probate attorney process (5.5) also apply to the internal legal process. This section will not repeat those recommendations. The process remains distinct and is mapped below.

5.6.2. Process Map



5.6.3. Step-by-Step Process Description

1. Trigger: The case management system flags cases for attorney assignment and compiles materials. The system selects cases based on aging and estimated recovery value or other Department-defined criteria.
2. The Department attorney receives the case assignment, reviews, and conducts research on the case as appropriate.
3. The Department attorney determines if there are heirs by reviewing the information in the case file. If there are no heirs, the process moves to step 10 where the attorney requests special administrator or personal representative status.
4. If there are heirs or an estate attorney named in the case file information, the attorney contacts them to discuss the lien and moving it to probate.
5. The Department attorney updates the case file in the case management system, based on the outcome of the discussion with the heir or estate representative.
6. The case management system alerts the lien coordinator to changes in the case file.
7. The lien coordinator continually monitors the status of the case.
8. If the family or estate representative decides to bring the case to probate on their own,
9. The probate process begins.
10. If the case is not going to probate, the Department's attorney applies for special administrative or personal representative status with the district court, entering this information into the case management system.
11. The case management system generates the special administrative or personal representative status court filing documents. The case management system alerts the lien coordinator of this, and steps 6 and 7 repeat.
12. The district court receives the special administrative or personal representative status filing and grants the status to the lien coordinator.
13. The Department attorney receives notice of the court's decision to formally permit the lien coordinator to act as the estate's representative.
14. The Department attorney updates the case file in the case management system.
15. The case management system alerts the lien coordinator of the court's decision.
16. The lien coordinator decides whether to move the case to probate and updates the case management system.
17. If the case goes to probate, the probate process begins.
18. If the case does not go to probate, the lien coordinator may try to sell the property to settle the lien. In this case, the lien coordinator researches and confirms the estate's real property.
19. The lien coordinator contacts a realtor to list and subsequently sell the property for the purpose of recovering Medicaid funds.

20. The realtor lists and sells the estate's real property.
21. The realtor works with the title company and sends payment to the Department to satisfy the claim. Remaining proceeds are distributed to the named beneficiaries of the estate.
22. The receipt process begins.

5.7. Lien Release

5.7.1. Introduction

Major changes in the lien release process relate to calculating the total claim owed in the MMIS and automating correspondence.

5.7.2. Quick Wins

We did not identify any quick wins for the lien release process.

5.7.3. Medium Term Recommendations

Implement a Case Management System (High Priority)

A case management system should support the following lien release functions:

- Contain recipient DD information.
- Automatically request DD claim total from AWACS-DDP.
- Automatically calculate the total claim amount owed, including DD, medical, and prescription claims.
- Support a document management system that automatically generates and records documents and correspondence to families, recipients' attorneys, legal estate representatives, title companies, and clerk and recorder offices.
- Capture why lien is released, connecting information to community spouse, exempt child, and exempt sibling information.

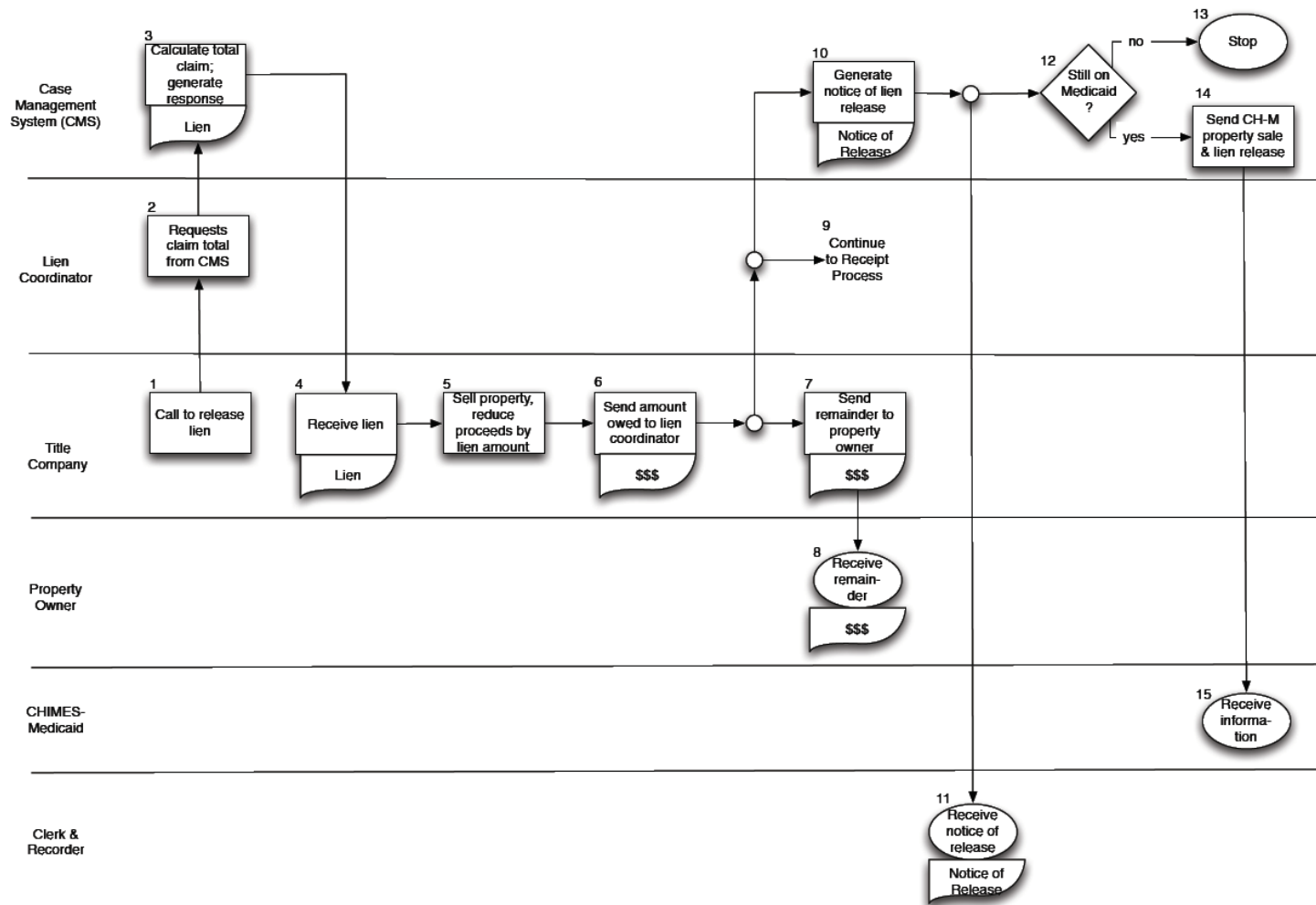
5.7.4. Long Term Recommendations

MMIS Automatically Sends Lien and Estate Recovery Claim Information (High Priority)

The TPL Unit should automatically receive information on recoverable claims from the MMIS, without querying the system. The case management system will automatically total the claim amount owed.

5.7.5. Process Map

To-Be Lien Release Process



5.7.6. Step-by-Step Process Description

1. Trigger: The title company contacts the lien coordinator to notify the Department of an upcoming property sale and requests a lien release.
2. The lien coordinator requests the recipient's medical and pharmacy claim total from the case management system.
3. The case management system contains all claim information for that recipient from the MMIS, and automatically totals pharmacy, medical, and DD claims. The system automatically generates and sends the lien to the title company.
4. The title company receives the lien amount owed.
5. The title company sells the property, reducing the proceeds to the owner by the lien amount owed.
6. The title company sends a check to the TPL program officer to satisfy the lien.
7. The title company sends the remainder of the property proceeds to the property owner.
8. The property owner receives the proceeds from the property sale.
9. The receipt process begins.
10. The case management system generates a notice of lien release and submits it to the clerk and recorder.
11. The clerk and recorder receives the lien release notice.
12. The case management system checks if the Medicaid recipient is still receiving Medicaid benefits.
13. If the recipient is no longer receiving Medicaid services the process stops.
14. If the recipient is still receiving services, the case management system sends the lien release information to CHIMES-Medicaid.
15. CHIMES-Medicaid receives the lien release information.

5.8. Receipt

5.8.1. Introduction

The to-be receipt process will be streamlined by using the Department's Accounts Receivable Management System, which will eventually reside in the shared fiscal services layer. Accounting information will reside in one place, and the process will not contain reconciliation. ACS will be removed from the process.

5.8.2. Quick Wins

We did not identify any quick wins for the receipt process.

5.8.3. Medium Term Recommendations

Use ARMS for Receipt Processing (Medium Priority)

ARMS can be used as a cash receipts module of the case management system, recording the amounts received as well as those sent to CMS and Senior Long-Term Care. ARMS will also record payments to attorneys and counties. Reconciliation may need to be a part of the ARMS process until information is shared using web services.

Eliminate ACS' Role in Receipt Processing (Medium Priority)

The TPL Unit should not use ACS to log checks. ARMS will retain a log of all receipts and payments.

Implement a Case Management System (High Priority)

A case management system should support the following payment and receipt functions:

- Automatically enters receipt information in ARMS.
- Support a document management system that automatically generates and records documents and correspondence regarding receipts and payments.

5.8.4. Long Term Recommendations

Utilize the Shared Fiscal Services Layer (Medium Priority)

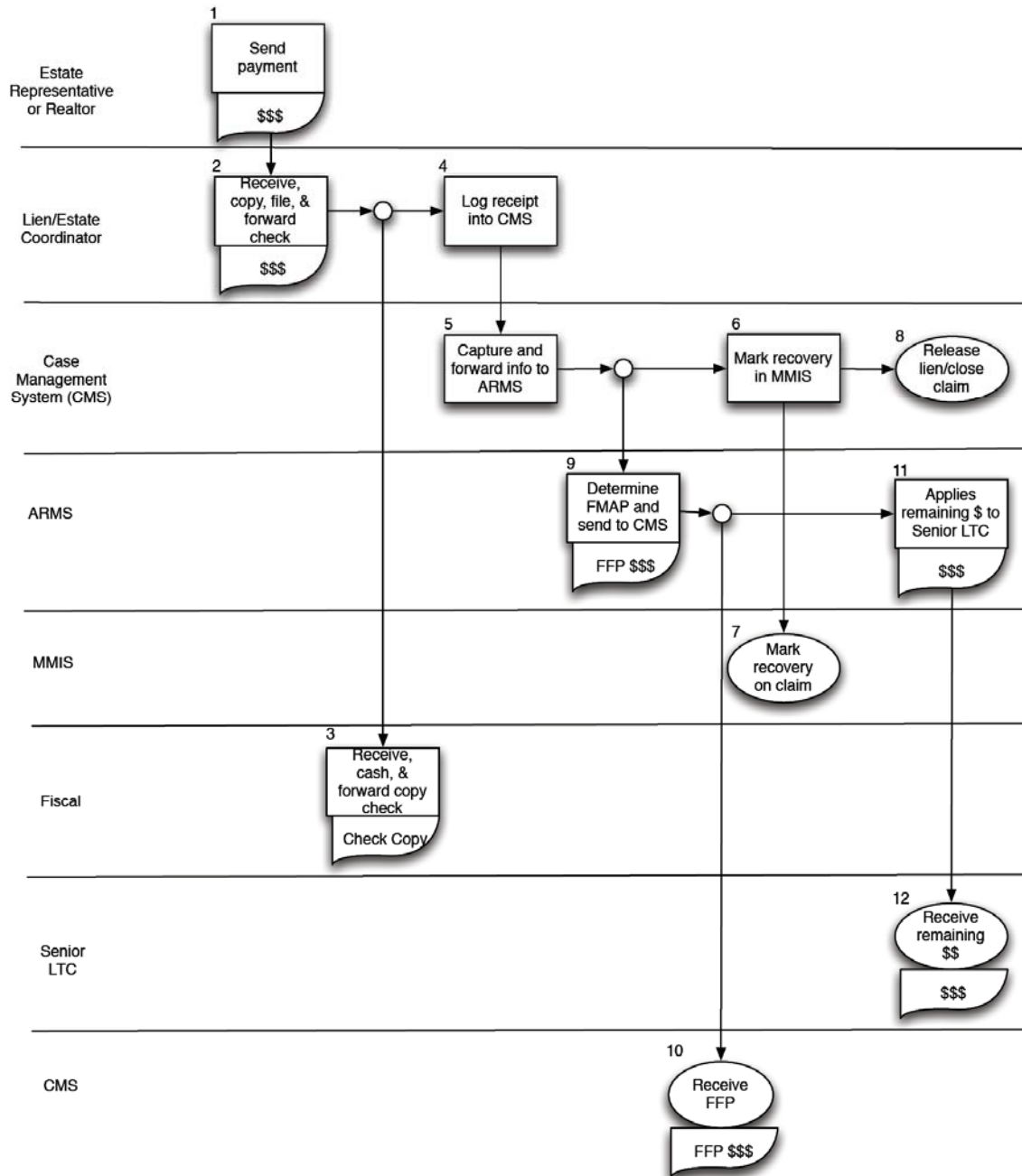
Develop the case management system to share information with the shared fiscal services layer using web services.

Mark Recovered Claims in the MMIS (Medium Priority)

Claims against which recovery has been made should be marked as recovered or partially recovered in the MMIS.

5.8.5. Process Map

To-Be Receipt Process



5.8.6. Step-by-Step Process Description

1. Trigger: A debtor sends a payment to the lien or estate coordinator.
2. The lien or estate coordinator receives the payment, makes a copy of the check, and forwards the payment to the Fiscal Services Bureau for deposit (or to be cashed if it is in check form).
3. Fiscal Services receives and processes the check.
4. The lien or estate coordinator logs the receipt into the case management system.
5. The case management system captures the information and sends it to ARMS.
6. The case management system identifies the claims against which the recovery was made, and sends this information to the MMIS.
7. The MMIS marks the claim as wholly or partially recovered.
8. The case management system releases the lien and/or closes the claim.
9. ARMS calculates the FMAP amount for payment to CMS and generates the payment to CMS.
10. CMS receives its recovery payment percentage.
11. ARMS calculates and sends any remaining funds to the Senior Long Term Care Division.
12. Senior Long Term Care Division receives the remaining money.

5.9. Estate Research

5.9.1. Introduction

The to-be estate research is benefiting from additional data sources to identify recipients' and their families' deaths and assets. The case management system plays a central role in receiving, maintaining, and relating the data.

5.9.2. Quick Wins

Train OPA Offices to Record Complete and Accurate Estate Recovery Information (High Priority)

Work with the OPA staff to elicit more complete asset information from Medicaid applicants.

Require eligibility workers to enter dates of death in TEAMS when closing cases due to death.

Obtain Heir Information from Nursing Facilities (Low Priority)

The TPL Unit could increase its questionnaire response rate if it verifies heir and contact information with nursing facilities. A request for heir information should be included in the PNA letter.

Expand the Questionnaire (Medium Priority)

The TPL Unit should expand the questionnaire to request information on additional assets. The questionnaire should be sent with a fact sheet containing a written explanation of the types of assets estate representatives/families must report.

Send Hardship Waiver Information (Low Priority)

The TPL Unit should send hardship waiver information with the estate recovery questionnaire, ensuring that all probate and non-probate claims have adequate hardship information and filing opportunity.

Track Questionnaires and Follow Up on Unreturned Questionnaires (High Priority)

Track questionnaire responses and follow up on non-responses. Enter alerts in TortTracker as a reminder to follow up on unreturned questionnaires.

Verify Questionnaire Information with TEAMS and DIFSLA (High Priority)

Crosscheck questionnaire information against asset information in TEAMS and the US Treasury's DIFSLA report.

Provide Feedback to OPA Offices (Low Priority)

When the TPL Unit discovers missing asset information, staff should provide feedback to the OPA office. Performance metrics should be established to ensure long-term improvement in asset collection.

Query the MMIS for Lien and Estate Recovery Information (High Priority)

Establish canned queries to capture claim information for recipients discharged from nursing facilities or hospitals due to death.

Use TortTracker for Community Spouse, Exempt Child, and Exempt Sibling Information (High Priority)

Until the case management system is implemented, the TPL Unit should enter available spouse, child, and sibling information into TortTracker as recipients. Set review dates and track death information on these family member exemptions as if they were Medicaid recipients.

Streamline Property Research with Statewide Cadastral System (High Priority)

Use the statewide Cadastral system to streamline property research.

5.9.3. Medium Term Recommendations

Implement a Case Management System (High Priority)

A case management system should support the following estate research functions:

- Receive and maintain CHIMES-Medicaid death and asset information.

- Receive information from the death database on a daily basis.
- Automatically generate questionnaires, populating them with known asset information that the family or estate representative then verifies.
- Track and report aging of unreturned questionnaires.
- Prompt the estate coordinator to follow up on unreturned questionnaires.
- Report cases in priority order according to recovery value or other Department-defined criteria.
- Support a document management system that automatically generates and records documents and correspondence for estate questionnaires and other purposes, including hardship waiver information and request form.

Discontinue Use of Obituary Clipping Services (Medium Priority)

Stop using the obituary clipping service once it can be verified that 99 percent of death information is available through CHIMES-Medicaid and the death database.

Provide Feedback to OPA Offices (High Priority)

When the TPL Unit discovers missing asset information, staff should provide feedback to the OPA office. Performance metrics should be established to ensure long-term improvement in asset collection.

5.9.4. Long Term Recommendations

Flag Recipients Identified for Lien and Estate Recovery within the MMIS (High Priority)

The case management system could automatically identify recipients who are candidates for estate recovery within the MMIS.

The MMIS could also alert the TPL Unit when changes occur for flagged recipients, including changes to claim activity or Medicaid status occur.

MMIS Automatically Sends Lien and Estate Recovery Claim Information (High Priority)

The TPL Unit should automatically receive information on recoverable claims from the MMIS, without querying the system. The case management system could automatically check that it has information on all recipients associated with these claims. Included in this information would be recipients discharged from nursing facilities or hospitals because of death.

Explore Alternative Ways to Track Community Spouses, Exempt Children, and Exempt Siblings (Low Priority)

The Department should explore efficient means to locate current addresses for community spouses, exempt children, and exempt siblings. Options may include obtaining information from the Department of Motor Vehicles, Licensing Division, or the Department of Revenue.

Utilize Contingent Claims (High Priority)

When a Medicaid decedent has a community spouse, exempt child, or exempt sibling, the TPL Unit could file a contingent claim against the decedent's estate before it goes to

probate. If the spouse, child, or sibling dies before the estate is closed, Medicaid can collect its claim.

Receive Probate Information from FullCourt System (High Priority)

Develop the case management system to receive daily updates on new probate cases from FullCourt.

Pass Legislation Giving Medicaid Priority Creditor Status (High Priority)

This status would ensure that Medicaid is able to know about and collect from small estates.

Pass Legislation Requiring Notice to Creditor or Small Estate Affidavit (High Priority)

Change the probate laws to require that Medicaid is notified of small estates. The State should require estate representatives to notify creditor when it has a claim in any case opened in probate, to ensure Medicaid does not miss small estates.

Discontinue Use of Probate Clipping Services (Low Priority)

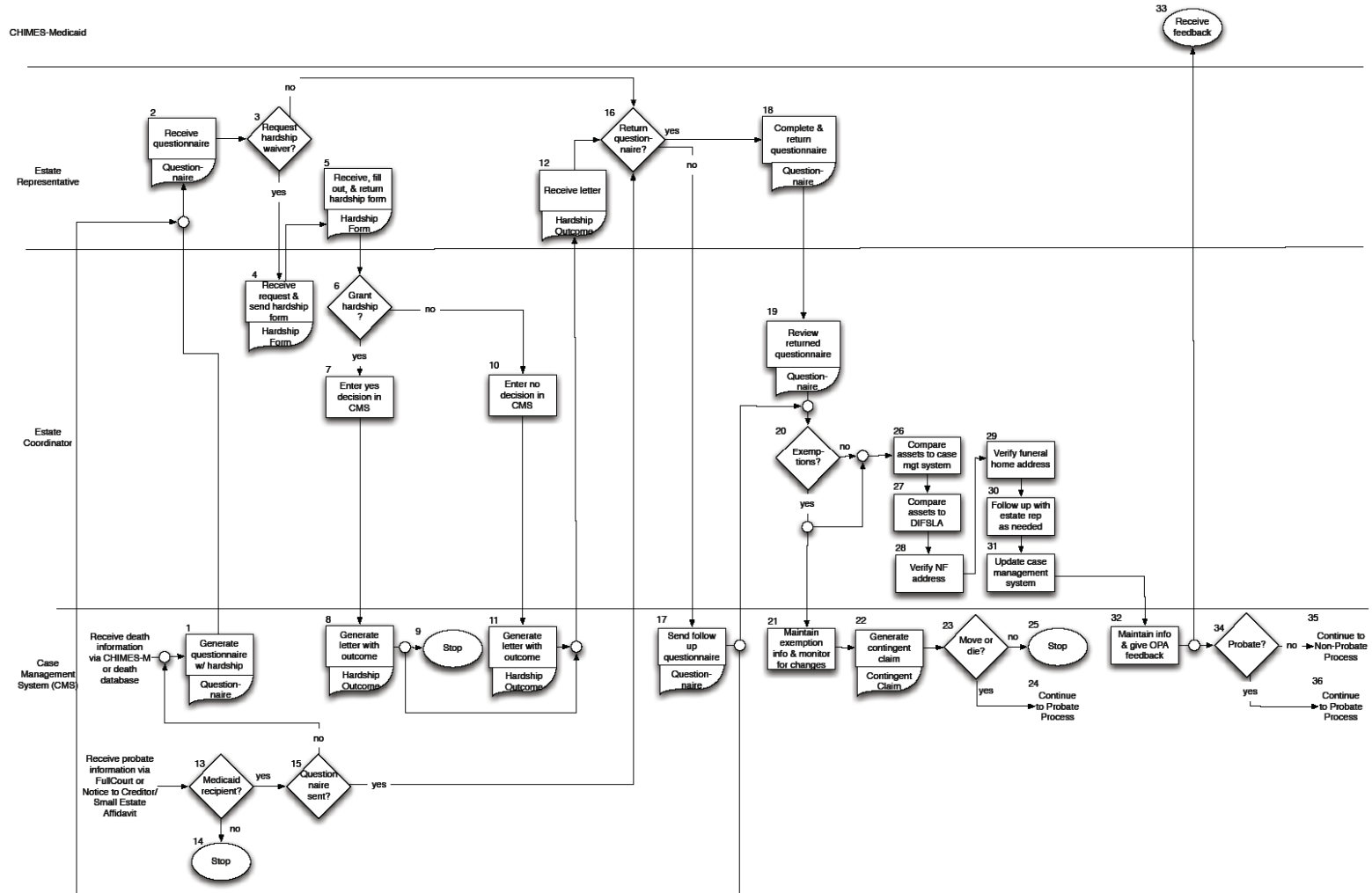
Stop using the probate clipping service once it can be verified that almost all probate information is received in a timely manner.

Provide Feedback to OPA Offices (Medium Priority)

When the TPL Unit discovers missing asset information, staff should provide feedback to the OPA office. Performance metrics should be established to ensure long-term improvement in asset collection.

5.9.5. Process Map

To-Be Estate Research Process



5.9.6. Step-by-Step Process Description

Triggers The case management system learns of recent deaths from the death database, the MMIS, or CHIMES-Medicaid.

1. The case management system generates questionnaires for each decedent's estate representative, whether a family member or attorney, as well as the hardship waiver information and request form.
2. The estate representative receives the questionnaire and hardship waiver information.
3. The estate representative decides whether to request the hardship waiver.
4. If the estate representative decides to request a hardship, s/he requests a hardship waiver form from the estate coordinator, who sends the form.
5. The estate representative fills out and returns the form.
6. The estate coordinator determines whether to grant or deny the hardship request.
7. If the hardship request is granted, the estate coordinator updates the case management system.
8. The case management system generates the hardship response correspondence, notifying the estate representative that the hardship is granted.
9. If the hardship waiver has been granted, the process stops.
10. If the hardship request is denied, the estate coordinator updates the case management system accordingly.
11. The case management system generates the hardship response correspondence, notifying the estate representative that the hardship is denied.
12. The estate representative receives notification of the hardship waiver decision, regardless of the outcome.

Trigger: The system learns of new probate cases from FullCourt and Notices to Creditor or Small Estate Affidavits.

13. The case management system automatically verifies if the probate case relates to a Medicaid decedent.
14. If the probate case is not related to a Medicaid decedent, the process stops.
15. If the probate case is related to a Medicaid decedent, the case management system automatically verifies whether a questionnaire has been sent. If it has not, the process starts at step 1.
16. The estate representative decides whether to complete and return the questionnaire.
17. If the estate representative does not return the questionnaire, the case management system automatically sends another questionnaire. The estate coordinator may get involved if new contact information is available. The process will continue at step 20, regardless of whether the questionnaire is returned.

18. If the estate representative returns the questionnaire, s/he completes the form and returns it to the estate coordinator.
19. The estate coordinator reviews the returned questionnaire.
20. The estate coordinator verifies community family exemptions and enters them into the case management system.
21. The case management system maintains this information and monitors exempt spouses, children, and siblings for a change in their status (move or death).
22. The case management system automatically generates a contingent claim for these exempt populations.
23. The case management system receives information regarding change in residence or death for exempt populations.
24. If the spouse, child, or sibling moves or dies while probate is still open, the State will collect in the probate process.
25. If the spouse, child, or sibling does not move or die while probate is still open, the process stops.
26. The estate coordinator compares the asset and real property information against the information in the case management system.
27. The estate coordinator compares the interest-earning asset information with the DISFLA report, looking for additional interest-earning assets.
28. The estate coordinator verifies the nursing facility address.
29. The estate coordinator verifies the funeral home address.
30. The estate coordinator follows up with the estate representative as needed to confirm information.
31. The estate coordinator updates the case management system with new or corrected information.
32. The case management system receives the updated asset and address information, and automatically sends discrepancies between this information and the information in CHIMES-Medicaid to the appropriate OPA office via CHIMES-Medicaid.
33. CHIMES-Medicaid receives the feedback, directing it to the appropriate eligibility worker.
34. The case management system determines if the estate is going to probate or not, based on information obtained from the FullCourt system, Notice to Creditors, or from the questionnaire.
35. If the case is not going to probate, the non-probate process begins.
36. If the case is going to probate, the probate process begins.

5.10. Probate

5.10.1. Introduction

The to-be probate process automates a large portion of the as-is process. The case management system will allow the TPL Unit to track community spouses, exempt children, and exempt siblings and pursue recovery through probate. Communication improvements with courts and estate representatives or families are also central to the to-be changes.

5.10.2. Quick Wins

Use TortTracker for Community Spouse, Exempt Child, and Exempt Sibling Information (High Priority)

Until the case management system is implemented, the TPL Unit should enter available spouse, child, and sibling information into TortTracker as recipients. Set review dates and track death information on these family member exemptions as if they were Medicaid recipients.

Actively Pursue Unpaid Claims (Medium Priority)

Follow up more assertively on unpaid claims. Set the review timeframe and request claim status updates on unpaid claims at three-month intervals rather than two years. Push unpaid claims to the probate attorney process on a more aggressive schedule, determined on a case-by-case basis, and follow up on attorney processing monthly, as explained in the respective attorney-related processes. Establish expected schedule of case completions, track actual completions against schedule, and report on progress.

Improve Communication with Probate Courts (Medium Priority)

There should be more, ongoing communication between probate courts and the Department.

Streamline Property Research with Statewide Cadastral System (High Priority)

Use the statewide Cadastral system to streamline property research.

5.10.3. Medium Term Recommendations

Implement a Case Management System (High Priority)

A case management system should support the following estate research functions:

- Identify Medicaid recipients against whom probate can be filed (anyone eligible for estate recovery).
- Identify exemptions and create alerts or put cases in work queue when exemption status changes or time associated with exemption is close to expiration.
- Queue cases for regular status review.
- Exchange claim information with AWACS-DDP and CHIMES-Medicaid. (Case management system will interface with the MMIS in the long term.)

- Receive, compile, and maintain claim information.
- Prioritize cases according to potential recovery value or other Department-defined criteria.
- Support a document management system that automatically generates and distributes estate recovery documents, including hardship waiver, disallowance, and claim information.
- Capture and maintain information regarding petitions for allowance and hardship waivers.
- Track interest on overdue claims.

Develop and Implement Consistent Policy on Interest for Overdue Claims (Medium Priority)

The TPL Unit should develop and consistently implement an interest policy for overdue claims with time and dollar thresholds

5.10.4. Long Term Recommendations

MMIS Automatically Sends Lien and Estate Recovery Claim Information (High Priority)

The TPL Unit should automatically receive information on recoverable claims from the MMIS, without querying the system. The case management system will automatically total the claim amount owed.

Receive Probate Information from FullCourt System (High Priority)

Develop the case management system to receive daily updates on open probate cases from FullCourt.

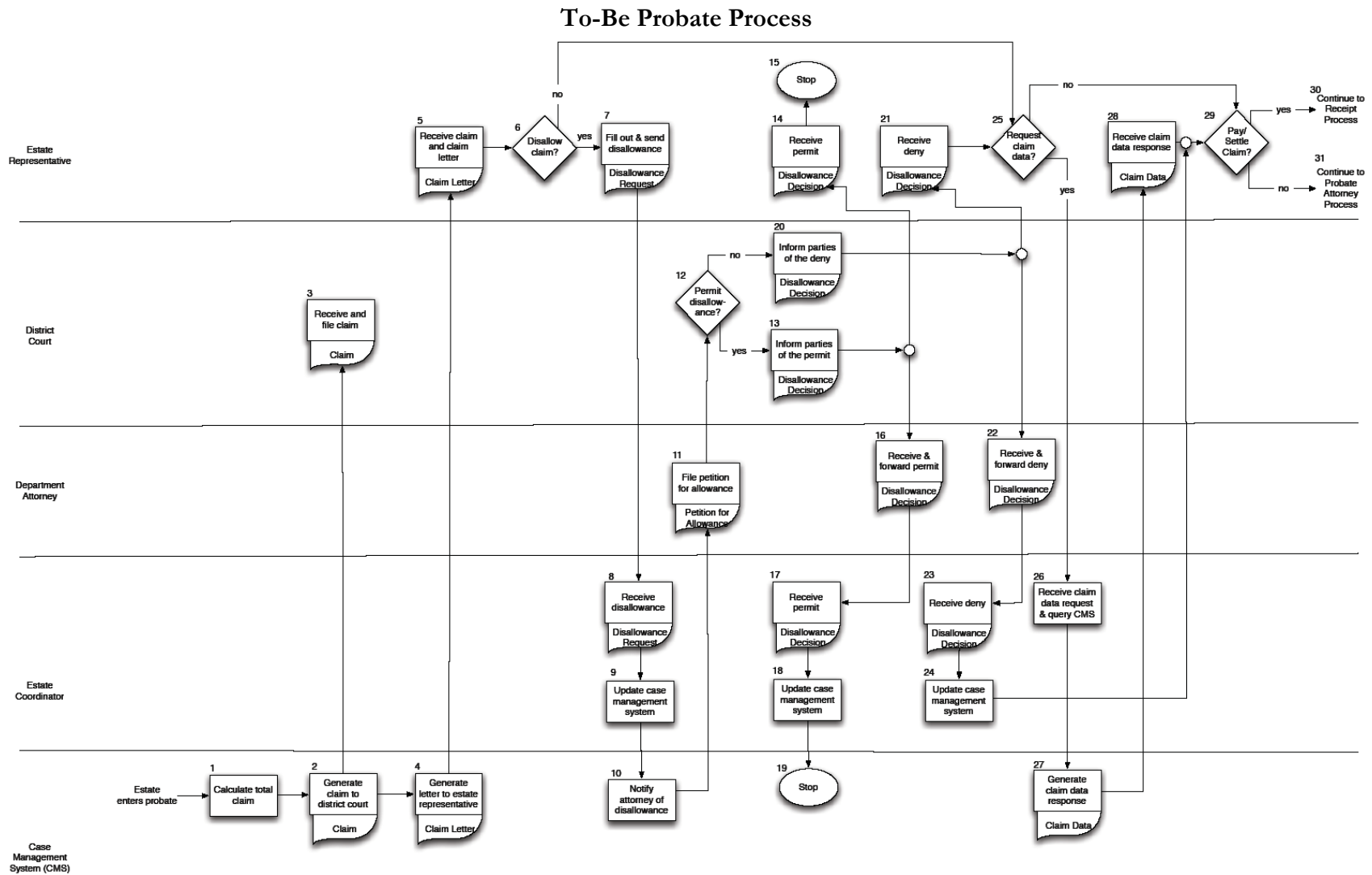
Pass Legislation Giving Medicaid Priority Creditor Status (High Priority)

This status would ensure that Medicaid is able to recover more money from probated estates.

Utilize Contingent Claims (High Priority)

When a Medicaid decedent has a community spouse, exempt child, or exempt sibling, the TPL Unit could file a contingent claim the decedent's estate goes to probate. If the spouse, child, or sibling dies before the estate is closed, Medicaid can collect its claim.

5.10.5. Process Map



5.10.6. Step-by-Step Process Description

Trigger: The estate enters probate, as noted in the FullCourt system, Notice to Creditors/Small Estate Affidavit, or on questionnaires.

1. The case management system calculates the total claim, using the claim information obtained from the MMIS for prescription, medical, and DD claims.
2. The case management system automatically generates and sends the Medicaid claim to the district court.
3. The district court receives and files the claim.
4. The case management system automatically generates and sends a copy of the claim to the estate representative.
5. The estate representative receives the claim and letter.
6. The estate representative decides whether to file to disallow the claim.
7. If the estate representative decides to file for disallowance, s/he fills out and sends the disallowance request to the estate coordinator.
8. The estate coordinator receives the disallowance request.
9. The estate coordinator updates the case management system.
10. The case management system notifies the attorney of the disallowance request.
11. The Department attorney receives the notification and creates a petition for allowance and files it with the district court.
12. The district court decides whether to permit or deny the disallowance.
13. If the district court permits the disallowance, it informs the estate representative and the Department attorney.
14. The estate representative receives the district court's decision to permit the disallowance.
15. The process stops if the disallowance is permitted.
16. The Department attorney receives the district court's decision to permit the disallowance and forwards it to the estate coordinator.
17. The estate coordinator receives the district court's decision to permit the disallowance.
18. The estate coordinator updates the case management system.
19. The process stops if the disallowance is permitted.
20. If the district court denies the disallowance, it informs the estate representative and Department attorney of its decision.
21. The estate representative receives the district court's decision to deny the disallowance.
22. The Department attorney receives the district court's decision to deny the disallowance and forwards it to the estate coordinator.
23. The estate coordinator receives the district court's decision to deny the disallowance.

24. The estate coordinator updates the case management system, and monitors the case to see whether the claim is paid (step 29).
25. The estate representative decides whether to request claim data.
26. If the estate representative decides to request claim data, the estate coordinator receives the claim data request and queries the case management system for claim data.
27. The case management system automatically generates and sends the response.
28. The estate representative receives the claim data response.
29. The estate representative decides whether to pay and settle the claim.
30. If the estate representative settles the claim, the receipt process begins.
31. If the estate representative does not pay the claim, the probate attorney process begins.

5.11. Non-Probate

5.11.1. Introduction

Using more and better sources of asset information will have the biggest positive impact on the to-be process for non-probate cases. The State should also pursue legislative changes to allow it to collect directly from additional asset sources, such as life insurance and banks, while simultaneously being vigilant about identifying exemptions and hardship cases. The new case management system will be the central tool in these process improvements.

5.11.2. Quick Wins

Verify Questionnaire Information with TEAMS and DIFSLA (High Priority)

Crosscheck questionnaire information against asset information in TEAMS and the US Treasury's DIFSLA report.

Collect nursing facility contact information from TEAMS if nursing facilities do not automatically send in PNA remainders.

Query the MMIS for Lien and Estate Recovery Information (High Priority)

Use the MMIS to locate nursing facility information if nursing facilities do not automatically send in PNA remainders and TEAMS does not contain accurate information.

Request Updated Self-Sufficiency Trust Information from PLUK (Low Priority)

The TPL Unit should actively pursue self-sufficiency trusts, and request updated information from PLUK. This information will be in CHIMES-Medicaid, but must be manually requested until CHIMES-Medicaid is implemented. Once CHIMES-Medicaid is implemented, the TPL Unit should continue to request updated information from PLUK.

Provide Feedback to OPA Offices (Low Priority)

When the TPL Unit discovers missing asset information, staff should provide feedback to the OPA office.

5.11.3. Medium Term Recommendations

Receive Additional Information from CHIMES-Medicaid (High Priority)

The TPL Unit will be able to identify more assets for non-probate collection through CHIMES-Medicaid, including trusts, assets of SSI recipients, and retirement accounts. Accurate will improve the accuracy of CHIMES-Medicaid's asset information.

CHIMES-Medicaid will identify funeral homes. This information will let the TPL Unit know that a decedent had burial funds. CHIMES-Medicaid does not have contact information for funeral homes, but the death database does. CHIMES-Medicaid may be enhanced to capture and maintain this information.

Implement a Case Management System (High Priority)

A case management system should support the following estate research functions:

- Identify Medicaid recipients against whom non-probate claims can be filed (anyone eligible for estate recovery).
- Identify exemptions and create alerts or put cases in work queue when exemption status changes or time associated with exemption is close to expiration.
- Queue cases for regular status review.
- Exchange claim information with AWACS-DDP and CHIMES-Medicaid. (Case management system will interface with the MMIS in the long term.)
- Receive, compile, and maintain claim information.
- Prioritize cases according to potential recovery value or other Department-defined criteria.
- Support a document management system that automatically generates and distributes estate recovery documents, including hardship waiver and claim information.
- Capture and maintain information regarding petitions for allowance and hardship waivers.
- Track interest on overdue claims.
- Shares information with ARMS.
- Track long term care partnership information.

Pass Legislation Allowing Medicaid to Collect from Financial Institutions (High Priority)

In the medium term, Medicaid may be able to collect directly from bank accounts, if legislation passes and is effective July 1, 2009.

Develop and Implement Consistent Policy on Interest for Overdue Claims (Medium Priority)

The TPL Unit should develop and consistently implement an interest policy for overdue claims with time and dollar thresholds

Provide Feedback to OPA Offices (High Priority)

When the TPL Unit discovers missing asset information, staff should provide feedback to the OPA office.

5.11.4. Long Term Recommendations

Pass Legislation Giving Medicaid Priority Creditor Status (High Priority)

This status would ensure that Medicaid is able to recover more money from non-probated estates.

Pass Legislation Making the State the First Remainder/Beneficiary on Life Insurance (Medium Priority)

Medicaid should be able to collect monies from life insurance.

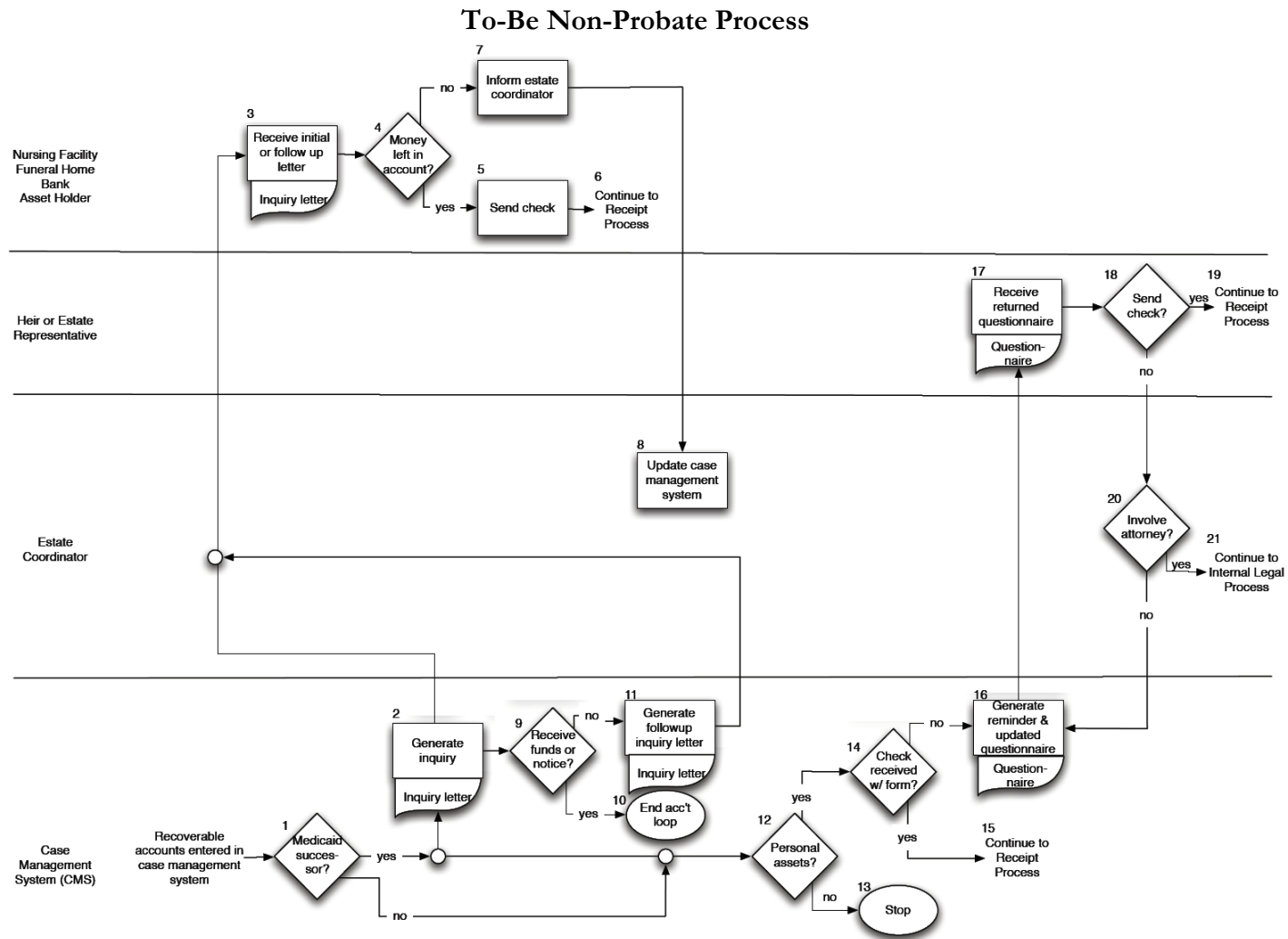
Pass Legislation Making Medicaid Successor on Estates (Medium Priority)

In the long term, the TPL Unit should try to be named the successor to other asset types in estates. The TPL Unit could use the improved asset data from CHIMES-Medicaid to determine which asset would create the highest recoveries.

Provide Feedback to OPA Offices (Medium Priority)

When the TPL Unit discovers missing asset information, staff should provide feedback to the OPA office.

5.11.5. Process Map



5.11.6. Step-by-Step Process Description

Trigger: The estate research process records recoverable accounts in the case management system.

1. The case management system determines whether the decedent had a PNA account, burial fund, bank account, or any other asset from which Medicaid can directly collect remaining funds.
2. If any account exists for which Medicaid is the named successor, the case management system generates an inquiry letter to the appropriate institution (nursing facility, funeral home, bank, etc.).
3. The nursing facility, funeral home, bank, or other institution receives the letter.
4. The nursing facility, funeral home, bank, or other institution determines if money is due to Medicaid from the account.
5. If the account has additional funds, the nursing facility, funeral home, bank, or other institution sends those funds to the TPL Unit.
6. The receipt process begins.
7. If there is no money in the account, the nursing facility, funeral home, bank, or other institution informs the TPL Unit.
8. The estate coordinator updates the case management system to say that there are no funds from which to recover.
9. The case management system will automatically check to ensure each applicable account loop is closed, either by recovering funds or by noting that the account did not have funds to send.
10. If there was no money and the system was updated to say so much, the account loop is closed. Also, if funds were received, the account loop is closed.
11. If the nursing home, funeral home, bank, or other institution does not reply, the case management system will automatically generate and send follow up correspondence. The estate coordinator is aware of this process.
12. The case management system assesses whether personal assets are available. Personal assets include investments, annuities, life insurance, retirement, and any other recoverable personal assets.
13. If no recoverable personal assets exist, the process stops.
14. If personal assets exist, the case management system confirms whether a check was received with the questionnaire form.
15. If the check was received, the receipt process begins.
16. If a check was not sent with the questionnaire response, the case management system automatically generates and sends a reminder on an updated questionnaire.
17. The estate representative or heir receives the follow up inquiry.

18. The estate representative or heir decides whether to send the owed funds.
 19. If funds are sent, the receipt process begins.
 20. If the estate representative or heir does not send the owed funds, the estate coordinator determines whether to involve the attorney.
 21. If the estate representative decides to involve an attorney, the internal legal process begins.
- If the estate representative does not think it makes sense to pursue a legal process, she will have the case management system continue to generate follow up notices, continuing the process from step 16.

5.12. Supporting Processes

5.12.1. Introduction

The following process changes support the to-be changes listed in the preceding sections, but do not neatly fit into any of the categories.

5.12.2. Quick Wins

Train OPA Offices to Record Complete and Accurate Estate Recovery Information (High Priority)

Work with the OPA staff to elicit more complete asset information from Medicaid applicants, capitalizing on CHIMES-Medicaid implementation.

Provide Feedback to OPA Offices (Medium Priority)

When the TPL Unit discovers missing real property or asset information, staff should provide feedback to the OPA office. Performance metrics should be established to ensure long-term improvement in asset collection.

5.12.3. Medium Term Recommendations

Conduct Workload Analysis (Medium Priority)

Review workload distribution based on caseload and estimated time and effort. Analyze the cost-benefit of reorganizing roles to distribute estate research and lien cases across both workers, rather than segregating estate research and lien cases in separate roles.

Define Performance Measures (High Priority)

The TPL Unit must decide which performance measures to use with its new case management system and associated lien and estate recovery processes.

Update Brochure and Web Site (Medium Priority)

The TPL Unit should focus on effectively communicating with recipients and their families to increase customer satisfaction and program compliance.

Provide Feedback to OPA Offices (High Priority)

When the TPL Unit discovers missing real property or asset information, staff should provide feedback to the OPA office. Performance metrics should be established to ensure long-term improvement in asset collection.

Invest in TPL Unit Training (Medium Priority)

The lien and estate coordinator should continuously keep their subject matter expertise up-to-date through workshops, conferences, and courses.

Implement Field Training for Eligibility Workers (High Priority)

The TPL Unit should take advantage of the BPR work being done for the CHIMES-Medicaid implementation, and ensure that lien and estate recovery issues are holistically covered. Regular training should continue over the long term.

Improve Communication with Nursing Facilities, Funeral Homes, and Banks (Medium Priority)

The TPL Unit should regularly communicate with all entities from which it directly collects funds to ensure they remain educated about Montana estate recovery requirements and collection procedures.

Consider Reorganizing TPL Workload Division (Medium Priority)

The TPL Unit should consider reorganizing its workload division, so one worker oversees an entire case, including both lien and estate recovery activity. The timing of this change could coincide with the new case management system, which would require process changes for the lien and estate coordinator.

5.12.4. Long Term Recommendations

Create Family-Focused Outreach Materials (Medium Priority)

Recipients' families should be aware of estate recovery and lien requirements to increase customer satisfaction and program compliance.

Provide Feedback to OPA Offices (Medium Priority)

When the TPL Unit discovers missing real property or asset information, staff should provide feedback to the OPA office. Performance metrics should be established to ensure long-term improvement in asset collection.

SECTION 6. Appendices

6.1. Glossary of Terms

121 Form – Questionnaire used by OPA staff to gather asset information from nursing home applicants.

AARP – American Association of Retired Persons.

ACS – Affiliated Computer Services.

AWACS-DDP – Agency Wide Accounting Client System – Developmental Disabilities Programs. DD uses DPHHS' AWACS system to process its claims, separate from the MMIS.

BENDEX – Beneficiary and Earnings Data Exchange, which provides a match by Social Security Number between public assistance case files and Social Security records.

BFSD – Business and Financial Services Division, often referred to as the Fiscal Bureau.

Burial Fund – Either a burial account or burial insurance, which helps pay for burial expenses.

Cadastral system – A web-interfaced program containing Montana property records.

Chasing claims – Refers to pursuing claims against real property owned by the decedent in other states.

CHIMES-Medicaid – Combined Healthcare Information and Montana Eligibility Systems-Medicaid, Montana's web-based Medicaid eligibility system.

Contingent claim – A claim filed against the estate of a Medicaid decedent when there is a surviving spouse, exempt child, or exempt sibling. The claim is enforced if the spouse or exempt party dies while the probate is open.

Contingent lien – A lien filed against the real property of a recipient, contingent on permanent institutionalization or death during an intent to return home.

CM – Case Management.

CMS – Centers for Medicare and Medicaid Services. Also, Case Management System in certain contexts.

DB1 – An Access database used by the estate coordinator in the TPL Unit to track questionnaires sent to recipients and their responses.

DB2 – TortTracker, which is an Access database used by the TPL Unit to track lien and estate recovery proceedings and information.

DD – Developmentally disabled or developmental disability.

DDD – Developmental Disabilities Division.

DIFSLA – Disclosure of Information to Federal, State, and Local Agencies. A report produced by the Internal Revenue Service providing tax return information on individual taxpayer earnings to certain agencies administering federally assisted benefit programs.

Discharge codes – Numeric claim codes used by hospitals, nursing facilities, or other institutions to identify reasons for discharge, including death.

DMV – Department of Motor Vehicles.

DPHHS – Department of Public Health and Human Services.

ER – Estate research or estate recovery depending on context.

FFP – Federal Financial Participation. Federal reimbursement for state Medicaid expenditures, based off a state's FMAP.

FMAP – Federal Medical Assistance Percentage. The percentage of state Medicaid expenditures reimbursed to states by CMS, which determines the FFP.

FullCourt – The Court Administration's system that consolidates county probate court information into a statewide database.

Hardship waiver – Request by the estate representative to waive claims based on a hardship.

HMS – Healthcare Management System. A vendor providing estate recovery service to state Medicaid agencies.

Informational lien – A commonly used term referring to a Request for Notice, which legally requires title companies to notify Medicaid of any transaction related to "liened" property.

Intent to return home – A doctor's signed statement that a recipient entering a nursing facility is not permanently institutionalized and intends to return home.

ISB – Information Systems Bureau.

Long Term Care Insurance Partnership Program – An incentive program to encourage lower-income individuals to purchase long-term care insurance. Eligibility and asset retention is then adjusted for individuals who have purchased long-term care insurance.

LER – Lien and Estate Recovery.

LTC – Long term care

Medicare Buy-in – Assistance to eligible recipients to pay Medicare premiums.

MITA – Medicaid Information Technology Architecture, which is both an initiative and a framework. This report refers to the framework, or blueprint of models, guidelines, and principles to assist states in implementing enterprise solutions as they replace their MMISes.

MMA – Medicare Modernization Act.

MMIS – Medicaid Management Information System.

NASMD – National Association of State Medicaid Directors.

NF – Nursing Facility.

OPA – Office of Public Assistance.

Part D File – A CMS report providing Medicaid recipient death information.

Petition for Allowance – Written request by Department’s attorney to the Court, requesting the Court to allow Medicaid’s probate claim, or in effect deny the estate representative’s request to disallow the claim.

PLUK – Parents Let’s Unity for Kids. A non-profit organization that administers the Montana Self-Sufficiency Trust.

PNA – Personal Needs Account. Account held at a nursing facility on behalf of a resident, holding a small amount of funds for personal use by the resident.

Post-death lien – A lien filed against the estate of a deceased Medicaid recipient, who is in possession of recoverable assets.

QAD – Quality Assurance Division.

QMB – Qualified Medicare Beneficiaries. A category of Medicare Buy-In assistance.

Questionnaire – The paper questionnaire sent to the estate representatives or family members of deceased Medicaid recipients requesting information about recoverable assets.

Remainder – A legal status equivalent to a beneficiary.

Request for Notice – Places a legal duty on title companies to notify the State of any transaction related to the property (pre-death) such as transfers of property or the recipient borrowing money against the property.

Self-Sufficiency Trust – The Montana Self-Sufficiency Trust is a statewide trust fund that accepts donations and generates income to provide supplemental services to individuals with special needs. Administered by the non-profit organization Parents Let's Unite for Kids.

SFSL – Shared Fiscal Services Layer. A SOA-based component of DPHHS' enterprise architecture that provides fiscal services to systems.

SLMB – Specified Low Income Medicare Beneficiary. A category of Medicare buy-in assistance.

SLTC – Senior Long-Term Care

SOA – Service Oriented Architecture. An information systems architecture that is comprised of independently functioning, service-oriented program components that other information-sharing services.

SOLQ – State Online Query. A system hosted by the Social Security Administration (SSA) allowing state agencies real-time only access to the SSA's Social Security Number verification service.

Special Needs Trust – A trust set up for a developmentally disabled individual to provide for their care over the course of their lifetime.

SSA – Social Security Administration.

SSI – Supplemental Security Income, which is additional income provided to destitute individuals over and above their social security income.

SSN – Social Security Number.

TCM – Targeted Case Management.

TEAMS – The Economic Assistance Management System, which is DPHHS' combined eligibility system for Medicaid, TANF, and SNAP (food stamps). TEAMS is being replaced by CHIMES.

TEFRA lien – Tax Equity Fiscal Responsibility Act. A pre-death Medicaid lien.

TPL – Third Party Liability.

Web services – Web-based services that can share information among various systems without duplication.

6.2. Montana Interviewee List

Organization/ Agency	Interviewee	Position	Contact Information
Quality Assurance Division	Helen Higgins	Estate Recovery Coordinator	hhiggins@mt.gov 406-444-4157
Quality Assurance Division	Lana Haynes	Program Officer/Lien Coordinator	lhaynes@mt.gov 406-444-7313
Legal	Barbara Hoffmann	Attorney	bhoffmann@mt.gov 406-444-5625
Legal	Chris Buslee	Assistant Attorney General	cbuslee@mt.gov 406-444-2026
Office of Public Assistance	Nancy Clark	Lead Medicaid Program Specialist	nclark@mt.gov 823-5005
Office of Public Assistance	Barb Flamand	Medicaid Policy and QA Specialist	bflamand@mt.gov 338-5131
MMIS	Duane Preshinger	Senior Medicaid Policy Analyst	dpreshinger@mt.gov 406-444-4145
MMIS	Michelle Gillespie	MMIS Project Director	mgillespie@mt.gov 406-444-1813
Quality Assurance Division	Jeff Buska	Division Administrator	jbuska@mt.gov 406-444-5401
Quality Assurance Division	Russ Hill	Bureau Chief	ruhill@mt.gov 406-444-4120
Quality Assurance Division	Terri Thompson	TPL Supervisor	tthompson2@mt.gov 406-444-6004
Developmental Disabilities Division	Jeff Sturm	Program Director	jsturm@mt.gov 406-444-2695
Developmental Disabilities Division	Matt Bugni	Bureau Chief	mbugni@mt.gov 406-444-3878
Information Systems Bureau	Alan Wintersteen	Information Systems Manager	awintersteen@mt.gov 406-444-4130
Senior Long Term Care	Kelly Williams	SLTC Division Administrator	kwilliams@mt.gov 406-444-4147
Senior Long Term Care	Joe Webber	Bureau Chief	jweber@mt.gov 406-444-4143

6.3. Other State and Vendor Interviewee List

Organization/ Agency	Interviewee	Position	Contact Information	Notes
Center for Medicare and Medicaid (CMS)	Giinne Hain	TPL, Central Office	410.786.6036	Provided list of states to contact.
Center for Medicare and Medicaid (CMS)	Diana Maiden	Health Systems Analyst (state lead for MT)	Diana.maiden@cms.hhs.gov 303.844.7144	
Colorado Department of Health Care Policy and Financing	Gary Ashby	Benefits Coordination Manager/TPL Conference Organizer	Gary.ashby@state.co.us 303.866.3947	
Iowa HMS	Ben Chatman	Iowa Estate Recovery Supervisor	Bchatman@smogroup.com 515.246.9841	Iowa uses HMS for ER services. Provided list of states to contact and made first contact.
Iowa HMS	Bob Flemming	Iowa Estate Recovery Unit	Interviewed in a group with B. Chatman and J. Hutcheson.	Iowa uses HMS for ER services.
HMS Main Office, Houston	Jon Hutcheson	Estate Recovery operations expert	Interviewed in a group with B. Chatman and B. Flemming.	
Washington Department of Social and Health Services	Shawn Hoage	Estate Recovery Supervisor	hoagesl@dshs.wa.gov 360.664.5483	Washington recently implemented an automated ER system.
Oregon Department of Human Services	Rick Mills	Estate Administrator	Rick.mills@state.or.us 503.378.2783	
Minnesota Department of Human Services	Dale Klitzke	Staff Attorney, Benefit Recovery Section	Dale.klitzke@state.mn.us 651.431.3108	
Ohio Attorney General's Office	Robert Byrne	Assistant Attorney General	rbyrne@ag.state.oh.us	
Arizona HMS	Darrin Shaffer	Estate Recovery Program Director	dshaffer@hms.com 602.954.8380 x103	Arizona uses HMS for ER services.
Arizona Department of Health Services	John Nystedt	AHCCCS TPL Administrator		Arizona uses HMS for ER services.
University of Massachusetts Medical School, Center for Health Care Financing	Jeannette Lynch	Estate Recovery Unit Supervisor	Jeannette.lynch@umassmed.edu	Massachusetts conducts ER through U. Mass Medical School.
Idaho Department of Health and Welfare	Jacque Kennedy-Gooch	Estate Recovery and TPL Manager	KennedyJ@dhw.idaho.gov 208.287.1167	Idaho uses HMS for ER services.
HMS IDHW Account	Marnie Basom	HMS Regional Director	375.1132 x8202	Idaho uses HMS for ER services.
Wyoming Department of Health	Sheila McInerney	Estate Recovery Coordinator	Sheila.mcinerney@health.wyo.gov 307.777.5389	

6.4. Documentation

Form	User(s)	Intended Use
120 Form, Medicaid Estate Recovery	Sender: OPA county eligibility worker Completed with: Medicaid applicant Receiver: TPL Unit	Informs applicant/recipient of Montana's estate recovery requirements.
121 Form, Real Property Liens for Nursing Home Residents	Sender: OPA county eligibility worker Completed with: Medicaid applicant Receiver: TPL Unit	Form to collect information on nursing facility applicants' real property and related exemptions.
Notice of Intent to File a Lien against the Recipient's Real Property	Sender: TPL Unit Receiver: Medicaid recipient	Explains what lien is, why and by whom the lien may be filed, possible exemptions, and right to a fair hearing.
Lien Questionnaire	Sender: TPL Unit Receiver: Medicaid recipient	Accompanies Notice of Intent to File a Lien.
Notice of Medicaid Assistance Lien	Sender: TPL Unit Receiver: Medicaid recipient	Notifies Medicaid recipients of liens filed against their real property.
Estate Recovery Questionnaire	Sender: TPL Unit Receiver: Decedent's family	Identifies PNA funds, banking accounts, and burial funds.
Notice of Intent to File a Claim Against the Recipient's Estate	Sender: TPL Unit Receiver: Estate Representative, decedent's family	Back of the Estate Questionnaire form. Informs family of Montana law regarding estate recovery. Requests information regarding exemptions, asset transfers, and probate filing.
Notice to NF Administrators and PNA Account Managers	Sender: TPL Unit Receiver: Nursing facilities	Notice to nursing facilities informing them of Montana law regarding PNA reimbursement to Medicaid.
Notice to Funeral Directors	Sender: TPL Unit Receiver: Funeral homes	Notice to funeral homes informing them of Montana law regarding burial fund reimbursement to Medicaid.
TEFRA Lien and Cover Letter	Sender: TPL Unit Receiver: County Clerk and Recorder	Lien sent to county clerk and recorder.
Release of Medical Assistance Lien	Sender: TPL Unit Receiver: County Clerk and Recorder	Legally releases lien.
Claim Letter	Sender: TPL Unit Receivers: Estate representative and County Clerk and Recorder	Establishes Medicaid claim in probate cases.
Hardship Waiver Form	Preparer: Family of deceased Receiver: Helen Higgins	Family of deceased recipient completes and submits form requesting hardship waiver.

Form	User(s)	Intended Use
OPA Lien and Estate Recovery Brochure	Preparer: TPL Unit and Senior Long Term Care Receiver: Medicaid applicants/recipients	Distributed to nursing facility applicants/recipients and all applicants/recipients over 55 years of age.

6.5. Performance Measures

Introduction

Future performance measures were identified after the to-be processes were developed and validated with DPHHS staff. Public Knowledge developed a set of measures based on the following:

- Areas Montana's program is already measuring, or data the program is already collecting.
- Findings from the best practices research.
- Public Knowledge's experience and expertise in performance measurement for public programs.

Performance measures are presented in two areas: operational measures for use by internal program management, and outcome measures for reporting to the Montana legislature and other external stakeholders.

Operational Measures

These are measures for internal management purposes. Operational measures are intended to be used by the program managers and staff, the people responsible for the day-to-day operations of the lien and estate recovery program. These measures help management assess how the program is doing and to identify whether short-term changes in operations are called for.

Recommended Operational Measures

1. Dollars spent on each case (legal service, probate filing costs, etc.)
2. Time to complete the process.
3. Accuracy with which rules are applied (%).
4. Consistency with which rules are applied (%).
5. Error rate (%).
6. Number and dollar value of liens/recoveries:
 - a. Filed.
 - b. Collected (number, dollar, and %).
7. Aging – how long does it take to resolve each claim?
 - a. How many claims are abandoned?
8. Percent of recovery by source (PNAs, bank accounts, homes, etc.)
9. Number of public complaints in a given timeframe and according to some standard (relates to education/outreach activities).

10. Attorney performance, including:
 - a. Aging of attorney caseloads.
 - b. Attorney caseload totals.
 - c. Collection/recovery rates, total and by attorney.
 - d. Abandonment rates, total and by attorney.
 - e. Attorney contact with TPL Unit.
11. Assignments and balances by case manager.
12. Number of forced probates (state opening probate).
13. Number of administrative hearings regarding estate recovery.
14. Waiver metrics, including:
 - a. Waivers requested.
 - b. Waivers granted.
 - c. Reasons for granting waivers.
15. Exemption metrics, including:
 - a. Number of exemptions granted.
 - b. Exemption claims later abandoned.
 - c. Exemption claims later collected.

Outcome Measures

These are measures intended for the general public and the legislature - the chief elected officials who represent the public. Because Montana's public and elected officials are concerned with the performance of many government programs, not just Medicaid estate recovery, even fewer measures should be reported to this audience. For this audience, the emphasis shifts from a broad array of operational measures toward a narrower focus on outcomes and efficiency.

Recommended Outcome Measures

1. Money received through estate recoveries.
2. Dollars invested vs. recovered dollars/ Administrative cost as percent of amount recovered.
3. Percentage of LTC expenditures recovered.

6.6. Best Practices Literature Bibliography

Roy Fredricks. Power Point Presentation: “Oregon’s Experience with Asset Transfers and Estate Recovery: Successes and Impediments.” Oregon Department of Human Services. Salem, OR. (Not dated.)

Georgetown University Long Term Care Financing Project. “Medicaid and an aging population.” Washington DC, July 2004.

Kaiser State Health Facts. “Medicaid and SCHIP.” URL: <http://www.statehealthfacts.org/comparecat.jsp?cat=4>. Accessed on: 12/21/08 and 01/13/09.

Naomi Karp et al. “Medicaid Estate Recovery: A 2004 Survey of State Programs and Practices.” AARP Public Policy Institute. Washington DC, 2005.

Judith Kasper et al. “Long Term Services and Supports: The Future Role and Challenges for Medicaid.” The Kaiser Commission on Medicaid and the Uninsured. Washington DC, 2007.

Medicaid Information Technology Architecture (MITA). Business Process Template, Operations Management, Business Area: Manage Estate Recovery.

National Association of State Medicaid Directors. “Estate Recovery Best Practices.” URL: http://www.nasmd.org/issues/docs/III_Estate_Recovery_Best_Practices.pdf. Accessed on: 12/03/09.

Julie Stone. “Medicaid Coverage for Long Term Care: Eligibility, Asset Transfers and Estate Recovery.” Congressional Research Service. Washington DC, January 2008.

Erica F. Wood et al. “Protections in Medicaid Estate Recovery: Findings, Promising Practices and Model Notices.” AARP Public Policy Institute. Washington DC, 2007.

US Department of Health and Human Services. Policy Brief: Medicaid Eligibility for Long Term Care Benefits, “Medicaid Estate Recovery. April 2005.

US Department of Health and Human Services. Policy Brief: “Medicaid Liens and Estate Recovery in Massachusetts.” 2005.

6.7. Washington Estate Recovery Questionnaire

OFFICE OF FINANCIAL RECOVERY
PO BOX 9501
OLYMPIA WA 98507

ESTATE RECOVERY QUESTIONNAIRE

September 5, 2004



FSA Financial Services
Administration

Client ID 003 692 266 (057)
DOB: 6-9-1938
DOD: 8-5-2004

ATTN Nursing Home Administrator or
Person Handling the Estate or Affairs of

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Please forward this notice to the attorney, personal representative or other person handling the estate of the deceased individual listed below.

The estates of clients who received state funded long-term care services without regard to age and Medicaid clients who were age 55 or older may be required to repay the costs of these expenses. (RCW 43.208.080)

FILL OUT AND RETURN AS SOON AS POSSIBLE

1. a. Is the decedent's spouse (husband/wife) still living? ☐ Yes ☐ No If yes, complete the following:

SPOUSE'S NAME	DATE OF BIRTH	SOCIAL SECURITY NUMBER
---------------	---------------	------------------------

- b. Does the decedent and spouse have a community property agreement? ☐ Yes ☐ No If yes, attach a copy and indicate the county of recording: _____

- 2 Does the deceased have any surviving minor or adult child(ren)? ☐ Yes ☐ No If yes, complete the following:

NAME	AGE	ADDRESS

- 3 Do any of the above surviving children have a disability as defined under Chapter 388-511 WAC?

☐ Yes ☐ No If yes, complete the following:

NAME	SOCIAL SECURITY NUMBER
Lien and Estate Recovery Business Process Redesign	151

2 At the time of death, did the deceased own, or have interest in any of the following?

☐ Yes ☐ No (If yes, check all that apply below.)

- ☐ Mobile Home on private land
☐ House and/or land
☐ Cash and/or bank accounts (including nursing home trust fund)
☐ Property of other assets conveyed to a survivor or heir of the deceased individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.
☐ Other Assets (stocks, bonds)

If any of the above assets are checked, describe the assets, the value and where located.

ASSETS	VALUE	LOCATION

Provide the following information for all persons who are titled owners of the **real** property of the deceased:

NAME	ADDRESS	RELATIONSHIP TO DECEASED

3 Has probate been filed? ☐ Yes ☐ No

If yes, indicate probate number and county of filing: _____
PROBATE NUMBER COUNTY

4 If no, will probate be filed? ☐ Yes ☐ No

5 List a contact person or the attorney:

Name _____ Relationship _____
Address _____ Telephone _____

Please mail this completed form to:

FFICE OF FINANCIAL RECOVERY
PO BOX 9501
OLYMPIA WA 98507-9501

If you have any questions, please call the Estate Recovery Program at (360) 664-5700; 1-800-562-6114 Washington toll free) or 1-800-452-2334 (Language Interpreter) or 1-800-833-6388 (TTY Washington Relay Services)